



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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मंगलवार, 08 दिसम्बर, 2015/17 अग्रहायण, 1937

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हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Shimla, the 23<sup>rd</sup> November, 2015*

**No: Sharm (A) 6-3/2014 (Awards).**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:--

Sr. No.	Case No.	Title of the Case	Date of Award
1.	113/2007	Shri Bikram Singh V/s M/S Purolator India Ltd Parwanoo.	26-10-2015
2.	28/2015	Smt. Kamla Devi V/S The Director Elementary Education Shimla & Others.	16-10-2015
3.	139/2007	Shri Naveen Kumar v/s M/s Himachal Exicom Commnication, Solan.	07-10-2015
4.	141/2007	Shri Narinder Kumar V/S -do-	07-10—2015
5.	22/2015	Shri Iswar Dass V/S Ex. Engg I&PH Divional Recong Peo.	16-10-2015
6.	18/2015	Shri Daulat Ram V/S Divisonal Forest Officer, Renuka.	15-10-2015
7.	58/2010	Shri Krishan Lal V/S State of HP through the Secty Forest & Others.	16-10-2015
8.	83/2009	Shri Hari Chand V/S -do-	16-10-2015
9.	84/2009	Shri Jai Singh V/S -do-	16-10-2015
10.	85/2009	Shri Satish Kumar V/S -do-	16-10-2015
11.	8/2012	Shri Pancham Ram V/S M/S Forge India Pvt. Ltd. Parwanoo.	08-10-2015
12.	18/2014	Shri. Ramesh Chand V/S HPPWD & Others.	26-10-2015

By order,  
Sd/-

*Pr. Secretary ( Lab. & Emp.)*

### Ref.113 of 2007

#### **Sh. Bikram Singh V/s M/s Purolator India Ltd Parwanoo.**

**26.10.2015:**

Present:- Sh R.K. Khidtta, Advocate for petitioner.

Shri. Ajay Kumar, Advocate for respondent.

The petitioner Shri Bikram Singh has stated that he has settled the matter with the respondent company and received a payment of Rs.1,10,000/- (Rs. One lac Ten Thousand ) only by way of cheque no. 001845 dated 24.10.2015 drawn on Bank of Baroda, Branch, Taksal, Parwanoo as full & final payment in respect of the claim petition and as such the reference petition may be answered accordingly.

The statement of the petitioner recorded separately.

Heard, Since, the parties have settled the dispute amicably. I am satisfied that a lawful compromise has been effected between the parties. Therefore, the reference which has been sent by the appropriate government for adjudication is ordered to be answered accordingly in terms of statement of petitioner which shall for part and parcel of this order/ award. Let a copy of this

order/award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

26.10.2015

Sd/-  
Sushil Kukreja,  
*Presiding Judge,*  
*Labour Court , Shimla.*

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**Ref 28 of 2015**

16.10.2015

**Smt Kamla Devi V/s Directory Elementry Education Shimla.**

16.10.2015

Present:- Petitioner along with Sh.B,K. Bali Adv.  
Sh.Jagdish RajtaLd.ADA for the respondent.

At this stage, vide separate statement recorded today. It has been stated on oath by the petitioner Smt Kamla Devi that she has been re-engaged as Mid Day Meal workers with effect from 12.6.2015 by the department /SMC (School Management Committee) and as such the reference be decided/answered accordingly.

Therefore, in view of the statement made by the petitioner on oath. I am satisfied that she has been re-engaged as Mid Day Meal worker with effect from 12.6.2015 by the respondents and as such the reference is answered in favour of the petitioner accordingly. The statement of petitioner Smt Kamla Devi shall form part and parcel of this order/award. Let the copy of this order/Award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced

16.10.2015

Sushil Kukreja  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP  
INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA.**

Ref no. 139 of 2007

Instituted on 12.11.2007.

Decided on 7.10.2015.

Naveen Kumar Thakur S/o Shri Shakti Prasad Thakur, C/o Shri Yashpal Kapoor, Village Kaleen, Ward No. 13, Tehsil & District Solan, HP. ...Petitioner.

VS.

The Vice President (Works) M/s Himachal Exicom Communications Ltd., Chambaghat Solan, HP. ...Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri Bhupinder Pathaniya, Advocate.

For respondent: Shri Rahul Mahajan, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

*"Whether the termination of the services of Shri Naveen Kumar Thakur S/o Shri Shakti Prasad Thakur, Senior Operator by the management of M/s Himachal Exicom Communications Limited, Chambaghat Solan HP w.e.f. 12.8.2004 after issuing chargesheet and holding enquiry is commensurate with charges and held to be legal and justified? If not, what back wages, service benefits and relief the concerned workman/operator is entitled to?"*

2. Facts, in brief are that the petitioner was engaged by the respondent on 30.6.1998 and his services had been confirmed on 1.7.1999 and thereafter he was promoted on 1.4.2002 as senior operator. It is asserted that the petitioner was trying to struggle with the management for the betterment of the workers i.e bonus and increments which was held illegally by the company. It is further asserted that false allegation qua illegal activities/misconduct with the help of Mr. Hardev and Miss Sushma Sharma for punishing the petitioner has been imposed because he was trying for the betterment of the employees and as such the conduct of the employer falls under section 25-T of the Industrial Disputes Act, 1947 (hereinafter referred as Act) and the employer is indulging in unfair labour practice. On 16.4.2004, the petitioner received a letter from the company demanding written report wrongly and illegally whereas nothing had happened with the Hardev (co-worker). The company had also issued suspension letter dated 16.4.2004, which was duly replied by him. Thereafter, another show cause-cum-chargesheet dated 8.5.2004, had been issued to the petitioner illegally wherein charge no.3 was imposed without giving the show cause notice or any copy of complaint. Since, the petitioner was trying to struggle for the betterment of the workers, he cannot be punished/penalized on the basis of false and frivolous complaint. It is further asserted that the enquiry officer had not conducted the enquiry in a fair manner and the enquiry report was one-sided and directly favours the employer/management. All the witnesses who were examined by the employer, during enquiry, their statements are different from each other and even the statement of complainant Mr. Hardev is not corroborated from the statement of the witnesses. The copy of complaint and other documents had not been supplied to the petitioner, which should have been supplied to him at the time of issuance of show cause notice or before framing charge sheet. It is further asserted that an additional charge, in the chargesheet, had also been incorporated which is totally false and without any basis. The allegations imposed upon the petitioner are totally wrong, false and is a result of conspiracy. The alleged enquiry report is one sided and not based on the facts and circumstances or evidence on record. The petitioner has never been indulged in any type of illegal activities. Against this back-drop, the petitioner prayed for reinstatement with all the consequential service benefits including full back-wages.

3. The petition has been contested on having raised preliminary objections qua maintainability and that the petitioner is gainfully employed. On merits, it has been asserted that the

services of the petitioner had been terminated after conducting a fair and proper enquiry, which was conducted by the enquiry officer as per the standing orders, principles of natural justice and fair hearing. The petitioner indulged in act of major misconduct and the punishment of termination of service after conducting just and fair domestic enquiry was commensurate with the misconduct. It is further asserted that chargesheet dated 8.5.2004 was served upon the petitioner. On the first date of enquiry, the entire procedure was explained to the petitioner as well as the management representative. Since, the reply submitted by the petitioner was found to be unsatisfactory, hence, the management decided to conduct the domestic enquiry and sufficient opportunities were given to the petitioner to put forth his case in the enquiry proceedings and the entire documents were supplied to him. Since, the petitioner had indulged in act of riotous behavior, assaulted and inflicted injury, out-raged the modesty of female employee and threatened the co-workmen while on duty, hence, the respondent has every right to issue show cause notice against the petitioner. The charges levelled in the chargesheet dated 8.5.2004, were on the basis of complaints made by Mr. Hardev Thakur and Sushma Sharma, which were duly proved during the enquiry proceedings and the copies were also provided to the petitioner. It is also asserted that the petitioner had been given all the opportunities to examine the witnesses. The petitioner participated in each and every date of enquiry, and signed the enquiry proceedings. Thereafter, a show cause notice along-with enquiry report had been given to him before terminating his services. The enquiry officer was an impartial person, who conducted the enquiry in just, proper and fair manner. The respondent at no point of time indulged in any unfair labour practice. Hence, prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner reaffirmed own allegations by denying those of the respondent.

5. It is pointed-out here that initially the issues, in this case, have been framed on 31.12.2009 but on 15.7.2010, an application under order 14 rule 5 read-with section 151 CPC for amending/recasting of issues was filed on behalf of the respondent which was allowed vide order dated 21.9.2010 and on the pleadings of the parties, the following issues were framed on 21.9.2010.

1. Whether the services of the petitioner w.e.f. 12.8.2004, have been terminated without holding proper and fair domestic enquiry as per the principles of natural justice as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the petition is neither competent nor maintainable? ...OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Relief. Reference answered against the petitioner and in favour of the respondent per operative part of award.

*Reasons for findings.**Issue no.1*

8. Learned counsel for the petitioner has argued with vehemence that the services of the petitioner had been terminated on the basis of false and frivolous complaints made by Shri Hardev Thakur and Ms. Sushma Sharma without following the procedure of law. He further contended that the enquiry conducted against the petitioner was not proper and fair and the enquiry officer submitted his report without verifying the facts and circumstances of the case, who adopted the hire and fire formula during the enquiry as neither the petitioner was afforded proper opportunities nor the documents were supplied to him on which the suspension letter and show cause notice were issued.

9. On the other hand, Learned counsel for respondent contended that on the basis of fair and proper enquiry, the services of the petitioner had been terminated. The enquiry officer has explained all the procedure to the petitioner on the date of enquiry. Since, the petitioner had indulged in a serious misconduct, his services have been terminated in accordance with law. The learned counsel further contended that the petitioner was afforded all the opportunities to defend himself during the enquiry and all the documents were also supplied to him. He was also afforded full opportunity to lead evidence in his support and to cross-examine the witnesses of the management.

10. The petitioner has appeared into the witness box as PW-1, to depose that he was engaged as an operator by the respondent on 1.7.1998. Initially he was appointed as trainee operator and he was made as regular operator on 1.1.1999 and thereafter he was promoted as senior operator on 1.4.2002. On 12.4.2004, Shri Hardev co-worker made an allegation against him regarding quarrel with him. On 16.4.2004, show cause notice was served upon him and he was placed under suspension and then domestic enquiry was conducted against him. Ms. Sushma Sharma co-worker also leveled allegation against him for outraging her modesty upon which he was served with show cause notice and domestic enquiry against this charge was conducted against him. No FIR was lodged against him by Ms. Sushma Sharma with the Police. No proper enquiry had been conducted against him and he was wrongly terminated from service by the respondent. In the cross-examination, he admitted that show cause notice-cum-chargesheet dated 8.5.2004 along-with its Hindi translation Ex. RA1 and Ex. RA2 had been received by him. He replied to the show cause notice, Ex. RA3. He admitted that he had filed reply dated 18.5.2004, Ex. RA4. He further admitted that regarding initiation of enquiry he was informed by the respondent vide letter Ex. RA5 and enquiry officer was appointed vide letter Ex. RA6. He also admitted that he received intimation given by the enquiry officer for proceedings of enquiry vide letter Ex. RA7. He admitted that he participated in them entire proceedings of the enquiry and also signed each and every document of the enquiry proceedings Ex. RA8. He also admitted that he was made to understand as per standing orders that he could engage any coworker as his defence assistant. He further admitted that he cross-examined all the witnesses of the management and also examined his own witnesses in defence. He admitted that he was given second show cause notice dated 31.7.2004 along-with enquiry report dated 26.7.2004, Ex. RA9 and he replied the second show cause notice vide Ex. RA10. He admitted that the charges were proved against him and on the basis of enquiry report and after considering his reply he was terminated from service. He admitted that he was given full opportunity to defend his case.

11. To rebut the case of the petitioner, the respondent examined Smt. Anuradha Jamwal, Personnel Officer, as RW-1, who tendered her affidavit Ex. RW-1/A, in examination-in-chief. She also tendered her authority letter Ex. RW-1/B and standing order Ex. RW-1/C. In the

crossexamination, she admitted that the petitioner was promoted as senior operator on 1.4.2002 in appreciation of his performance. She admitted that an additional charge of outraging the modesty of Smt. Sushma Sharma had been framed in show cause-cum-chargesheet Ex. RA-1. She further admitted that the complaint of Shri Hardev Sharma had been forwarded to the Police by the respondent and the complaint made by Smt Sushma Sharma had not been forwarded to the Police by the respondent. She denied that the complaint made by Smt. Sushma Sharma was a procured complaint under the influence of management.

12. RW-2, Shri Ramnik Sharma, enquiry officer, has stated that he was appointed as enquiry officer by the respondent company to conduct a joint enquiry against Naveen Kumar and Narender Kumar as per letter Ex. RW-2/A. Vide letter Ex. RA-6, he entered enquiry and intimated the date to petitioner and on the first date of enquiry he had asked the petitioner whether copy of chargesheet and standing orders had been received by him to which he replied that the same had already been supplied to him. The copy of day to day enquiry proceedings is Ex. RA-8. He explained the procedure of the enquiry to the petitioner. On 26.7.2004, he submitted the enquiry report Ex. RA-9 and the charges as leveled vide chargesheet against the worker were duly proved during enquiry. He conducted the enquiry as per the principles of natural justice and fair hearing and day to day enquiry proceedings were given/supplied to the petitioner on which he (petitioner) had also appended his signatures, on order sheets. In the crossexamination, he stated that he had gone through all the chargesheets and documents of these two cases after his appointment as enquiry officer. He denied that his enquiry report is totally biased against the worker.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that initially the petitioner was appointed on temporary basis as trainee operator and his services had been regularized w.e.f. 1.1.1999, as operator. Thereafter, the petitioner was promoted as senior operator w.e.f. 1.4.2002. It is also the admitted case of the parties that the services of the petitioner had been terminated after the enquiry was conducted against him.

14. The only plea which has been taken by the petitioner is that the enquiry conducted by the enquiry officer was not fair as the principles of natural justice were not complied with and the enquiry was not conducted in accordance with law as such the enquiry report is liable to be set aside. Now, the first question which arises for consideration before this Court is as to whether the enquiry against the petitioner has been conducted in a manner inconsistent with the principles of natural justice or the same has not been conducted in accordance with law.

15. It is by now well settled that the Court/Tribunal in its power of judicial review does not act as an Appellate Court to re-appreciate the evidence led in the domestic enquiry. The Court will not interfere with the findings of the fact recorded in departmental enquiry except where such findings are based on no evidence or they are clearly perverse. The Court will however interfere with the findings, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, malafide or based upon extraneous considerations. **In (1995) 6 SCC 749, titled as B.C Chaturvedi Vs. Union of India and others**, the Hon'ble Apex Court has held as under:

**“12.....The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever**

**reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.**

16. However, in the present case the plea of the petitioner that enquiry has not been conducted in accordance with law or the principles of natural justice were not complied with cannot be accepted in the light of the overwhelming evidence on record led by the respondent. As per the statement of RW-1, Smt. Anuradha Jamwal, Personnel Officer, the respondent issued a show cause notice-cum-chargesheet dated 8.5.2004, in English and Hindi which was duly received by the petitioner wherein charges of intimidation and threatening of a co-worker, indulging in riotous, disordering behavior and indulging in the activity of eve-teasing and out raging the modesty of a female employee, were leveled against him. She further deposed that reply to the chargesheet was filed by the petitioner and being dissatisfied with the reply, the respondent decided to conduct a domestic enquiry and Mr. Ramneek Sharma was appointed as an enquiry officer.

17. RW-2, Shri Ramneek Sharma, the enquiry officer specifically deposed that he intimated the date of enquiry to the petitioner as well as the respondent and on the first date of enquiry he had asked the petitioner as to whether he had received the copy of chargesheet and standing orders to which the petitioner told him that he had already been supplied all these documents. He further deposed that the procedure of enquiry was explained to the petitioner and even the standing orders of the respondent company were read over and explained to the petitioner. He also deposed that thereafter on different dates he had examined the witnesses of both the parties and the copies of the statements of the witnesses so recorded, were handed-over to the petitioner and to this effect his signatures were also obtained. He further deposed that on each statement of the witnesses, he obtained the signatures of delinquent/petitioner and thereafter he submitted the enquiry report dated 26.7.2004, Ex. RA-9. He also deposed that the enquiry had been conducted as per the natural justice and fair hearing and the charges as leveled vide chargesheet against the petitioner were duly proved in the enquiry. Both the witnesses were cross-examined at length by the petitioner, however, nothing favourable could be elicited from their lengthy cross-examination. Moreover, in his cross-examination, the petitioner himself admitted that he had received show cause notice-cum-chargesheet dated 8.5.2004 along-with its Hindi translation and also replied to the show cause notice. He also admitted that he was informed by the respondent that they were not satisfied with his reply and as such they initiate enquiry against him vide letter Ex. RA-5. He further admitted that he participated in the entire proceedings of enquiry and also signed each and every document of enquiry. He also admitted that he was made to understand that as per standing order he could engage any co-worker as his defence assistant and despite knowing the same he did not engage any defence assistant. He further admitted that he cross-examined all the witnesses of management and also examined his own witnesses in defence. He further admitted that the charges stood proved against him in the enquiry and on the basis of enquiry report and after considering his reply he was terminated from service and that he was given full opportunity to defend his case.

18. Hence, from the perusal of the statements of RW-1 and RW-2, coupled with the cross-examination of the petitioner, it stands duly proved on record that the petitioner had participated in the enquiry and signed the proceedings on each and every date and a reasonable opportunity was given to the petitioner to cross-examine the witnesses of the management as well as to bring his own witnesses in defence. From the perusal of the record, it cannot be said that the principles of natural justice were not complied with or no proper opportunity of being heard was afforded to the petitioner. It also cannot be said that the enquiry officer was biased in any manner. I have also perused the enquiry report Ex. RA-9 minutely and did not find anything wrong with it. There is no reason to disbelieve the enquiry report. The charges of misconduct leveled vide chargesheets dated 8.5.2004, Ex. RA-1, stood duly proved against the petitioner.

19. Now, the next question which arises for consideration before this Court is as to whether the punishment awarded to the petitioner is disproportionate to the gravity of misconduct



or is not commensurate with the charges proved against the petitioner. **In (2005) 3 SCC 134 titled as Mahindra and Mahindra Ltd. Vs. N.B Narawade**, the Hon'ble Supreme Court has held that after introduction of section 11-A in the Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct but this discretion is certainly not unlimited and has to be exercised judiciously. The relevant portion of the aforesaid ruling reads as under:

**“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.”**

20. In the case in hand the petitioner has been found guilty of physically assaulting and injuring his co-worker and also sexually harassing his woman co-worker at work place which amounts to misconduct and consequently he was terminated/dismissed from service. **In (2005) 3 SCC 401 titled as M.P Electricity Board Vs. Jagdish Chandra Sharma**, it has been held by the Hon'ble Apex Court that where an employee assaulted and injured his superior officer at the work place, in the presence of other employees, the act amounted to breach of indiscipline in the organization and in such case the punishment of dismissal cannot be termed unduly harsh or disproportionate. The relevant portion of the aforesaid ruling reads as under:

**“9..... Obviously this idea is more relevant in considering the working of an organization like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion.”**

21. **In (1991) 1 SCC 759, titled as Apparel Export Promotion Council Vs. A.K Chopra**, it has been held by the Hon'ble Apex Court that sexual harassment at work place of female employee resulted in violation of the fundamental rights to gender equality and the right of life and liberty which needs to be eliminated and there can be no compromise with such violation. Relevant portion of the aforesaid ruling reads as under:

**“26. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the**

**Constitution of India.....That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.**

**28..... There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant, was, thus, commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review”.**

22. Therefore, in view of the aforesaid judgments and also in view of the facts and circumstances of the present case, it cannot be said that the punishment imposed upon the petitioner is disproportionate to the gravity of misconduct or is not commensurate with the charges proved against the petitioner as such the same does not call for any interference by this Court. Thus, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent, who was rightly chargesheeted in accordance with law and was afforded full opportunity to defend himself before enquiry officer and after the conclusion of enquiry, the petitioner was found guilty of misconduct and consequently he was terminated/dismissed from service and therefore, it does not lie in the mouth of the petitioner to say that his services have been terminated without holding proper and fair domestic enquiry as per the principles of natural justice. Accordingly, issue No. 1 is decided in favour of the respondent and against the petitioner.

### ***Issue No. 2***

23. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

### ***Issue No.3.***

24. In support of this issue, no evidence was led by the respondent. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Hence, this issue is decided in favour of the petitioner and against the respondent.

### ***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 7th October, 2015.

(Parveen)

(Sushil Kukreja),  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUMLABOUR COURT, SHIMLA**

Ref No. 141 of 2007

Instituted on 12.11.2007.

Decided on 7.10.2015.

Narender Kumar S/o Shri Puran Chand R/o Village Kaleen, Ward No. 13, House No. 121,  
Tehsil & District Solan, HP. ...Petitioner.

VS.

The Vice President (Works) M/s Himachal Exicom Communications Ltd., Chambaghat  
Solan, HP. ...Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri Bhupinder Pathaniya, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

***”Whether the termination of the services of Shri Narinder Kumar S/o Shri Puran Chand, Senior Operator by the management of M/s Himachal Exicom Communications Limited, Chambaghat Solan HP w.e.f. 14.8.2004 after issuing chargesheet and holding enquiry is commensurate with charges and held to be legal and justified? If not, what back wages, service benefits and relief the concerned workman/operator is entitled to?”***

2. Facts, in brief are that the petitioner was engaged by the respondent on 30.11.1999 and his services had been confirmed on 1.10.2000 and thereafter he was promoted on 1.4.2003 as senior operator. It is asserted that the petitioner was trying to struggle with the management for the betterment of the workers i.e bonus and increments which was held illegally by the company. It is further asserted that false allegation qua illegal activities/misconduct with the help of Mr. Hardev and Miss Sushma Sharma for punishing the petitioner has been imposed because he was trying for the betterment of the employees and as such the conduct of the employer falls under section 25-T of the Industrial Disputes Act, 1947 (hereinafter referred as Act) and the employer is indulging in unfair labour practice. On 16.4.2004, the petitioner received a letter from the company demanding written report wrongly and illegally whereas nothing had happened with the Hardev (co-worker). The company had also issued suspension letter dated 16.4.2004, which was duly replied by him. Thereafter, another show cause-cum-chargesheet dated 8.5.2004, had been issued to the petitioner illegally wherein charge no.3 was imposed without giving the show cause notice or any copy of complaint. Since, the petitioner was trying to struggle for the betterment of the workers, he cannot be punished/penalized on the basis of false and frivolous complaint. It is further asserted that the enquiry officer had not conducted the enquiry in a fair manner and the enquiry report was one-sided and directly favours the employer/management. All the witness as who were examined by the employer, during enquiry, their statements are different from each other and even the statement of complainant Mr. Hardev is not corroborated from the statement of the witnesses. The copy of complaint and other documents had not been supplied to the petitioner, which should be supplied to

him at the time of issuance of show cause notice or before framing charge sheet. It is further asserted that an additional charge, in the chargesheet, had also been incorporated which is totally false and without any basis. The allegations imposed upon the petitioner are totally wrong, false and is a result of conspiracy. The alleged enquiry report is one sided and not based on the facts and circumstances or evidence on record. The petitioner has never been indulged in any type of illegal activities. Against this back-drop, the petitioner prayed for reinstatement with all the consequential service benefits including full back-wages.

3. The petition has been contested on having raised preliminary objections qua maintainability and that the petitioner is gainfully employed. On merits, it has been asserted that the services of the petitioner had been terminated after conducting a fair and proper enquiry, which was conducted by the enquiry officer as per the standing orders, principles of natural justice and fair hearing. The petitioner indulged in act of major misconduct and the punishment of termination of service after conducting just and fair domestic enquiry was commensurate with the misconduct. It is further asserted that chargesheet dated 8.5.2004 was served upon the petitioner. On the first date of enquiry, the entire procedure was explained to the petitioner as well as the management representative. Since, the reply submitted by the petitioner was found to be unsatisfactory, hence, the management decided to conduct the domestic enquiry and sufficient opportunities were given to the petitioner to put forth his case in the enquiry proceedings and the entire documents were supplied to him. Since, the petitioner had indulged in act of riotous behavior, assaulted and inflicted injury, out-raged the modesty of female employee and threatened the co-workmen while on duty, hence, the respondent has every right to issue show cause notice against the petitioner. The charges levelled in the chargesheet dated 8.5.2004, were on the basis of complaints made by Mr. Hardev Thakur and Sushma Sharma, which were duly produced during the enquiry proceedings and the copies were also provided to the petitioner. It is also asserted that the petitioner had been given all the opportunities to examine the witnesses. The petitioner participated in each and every date of enquiry, and signed the enquiry proceedings. Thereafter, a show cause notice along-with enquiry report had been given to him before terminating his services. The enquiry officer was an impartial person, who conducted the enquiry in just, proper and fair manner. The respondent at no point of time indulged in any unfair labour practice. Hence, prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner reaffirmed own allegations by denying those of the respondent.

5. It is pointed-out here that initially the issues, in this case, have been framed on 31.12.2009 but on 15.7.2010, an application under order 14 rule 5 read-with section 151 CPC for amending/recasting of issues was filed on behalf of the respondent which was allowed vide order dated 21.9.2010 and on the pleadings of the parties, the following issues were framed on 21.9.2010.

1. Whether the services of the petitioner w.e.f. 12.8.2004, have been terminated without holding proper and fair domestic enquiry as per the principles of natural justice as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the petition is neither competent nor maintainable? ...OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Relief. Reference answered against the petitioner and in favour of the respondent per operative part of award.

### ***Reasons for findings***

#### ***Issue no. 1***

8. Learned counsel for the petitioner has argued with vehemence that the services of the petitioner had been terminated on the basis of false and frivolous complaints made by Shri Hardev Thakur and Ms. Sushma Sharma without following the procedure of law. He further contended that the enquiry conducted against the petitioner was not proper and fair and the enquiry officer submitted his report without verifying the facts and circumstances of the case, who adopted the hire and fire formula during the enquiry as neither the petitioner was afforded proper opportunities nor the documents were supplied to him on which the suspension letter and show cause notice were issued.

9. On the other hand, Learned counsel for respondent contended that on the basis of fair and proper enquiry, the services of the petitioner had been terminated. The enquiry officer has explained all the procedure to the petitioner on the date of enquiry. Since, the petitioner had indulged in a serious misconduct, his services have been terminated in accordance with law. The learned counsel further contended that the petitioner was afforded all the opportunities to defend himself during the enquiry and all the documents were also supplied to him. He was also afforded full opportunity to lead evidence in his support and to cross-examine the witnesses of the management.

10. The petitioner has appeared into the witness box as PW-1, and tendered his affidavit in examination-in-chief, wherein he supported all the material facts as stated in the petition including that vide letter dated 10.7.1998, he was called for interview by the respondent for the post of training operator and vide letter dated 30.11.1999, he was engaged on temporary basis as operator and thereafter his services had been regularized w.e.f. 1.4.2000 and his services were confirmed on 1.10.2000. W.e.f 1.4.2003, he was promoted as senior operator. On 12.4.2004, he was issued misconduct letter and suspension letter which were duly replied by him on 17.4.2004 and also asked the management to communicate with him in Hindi. On 8.5.2004, a show cause-cum-chargesheet was issued to him, wherein one new and very heinous charge of outraging the modesty of the women co-worker was also added. On 12.5.2004, he had been supplied the chargesheet in Hindi, which was duly replied by him. Thereafter, without considering his replies, on 19.5.2004, the respondent management had appointed enquiry officer to conduct the one sided enquiry with a preset mind to terminate his services. His request for assistance of one Shri Jagdish Bhardwaj, had been turned down by the respondent. During enquiry, no fair trial was afforded to him. He joined the enquiry under protest and even during enquiry the copies of allegations and statements of any of the witness were not provided to him. The enquiry proceedings were concluded and one sided report was issued against him wherein all the charges leveled against him have been said to be proved. After the conclusion of enquiry, he was served with second show cause notice dated 31.7.2004, which was duly replied but due to the adamant attitude of the respondent, his services had been terminated vide order dated 12.8.2004. The petitioner also tendered documents Ex. P-1 to

Ex. P-24. In the cross-examination, he admitted that suspension letter Ex. R-1, letter Ex. R-2 dated 16.4.2004 and Chargesheets Ex. R-3 & Ex. R-4, were received by him and he also replied the same vide Ex. R-5 and Ex. R-6. He further admitted that letter Ex. R-7 regarding conducting of domestic enquiry had also been received by him and Shri Ramneek Sharma was appointed as enquiry officer, who intimated him about the date of enquiry. He also admitted that the enquiry officer had explained the entire procedure on the first date of enquiry but stated that documents were not supplied to him. He admitted that he participated in the enquiry and cross-examined the management witnesses and also signed each enquiry proceedings, copy of which is Ex. R-9. In his evidence before enquiry officer, he examined Shri Naveen Kumar. He admitted that second show cause notice Ex. R-10 along-with enquiry report Ex. R-11 had been received by him. He also admitted that vide letter Ex. P-19, he was told by the management that he was entitled to be assisted by any co-worker as per standing orders. He admitted that no complaint has been made by him in writing to the effect that enquiry officer was conducting one sided enquiry. He admitted that complaint Ex. R-12 had been made by Shri Hardev Thakur against him. He denied to have been afforded full opportunity to defend himself during enquiry.

11. To rebut the case of the petitioner, the respondent examined Smt. Anuradha Jamwal, Personnel Officer, as RW-1, who tendered her affidavit Ex. RW-1/A, in examination-in-chief. She also tendered her authority letter Ex. RW-1/B and standing order Ex. RW-1/C. Ex. RW-1/D, is the letter dated 19.5.2004, regarding appointment of enquiry officer. Vide Ex. R-9, Shri Sanjay Kumar, the then Assistant Manager, had been appointed as management representative in the enquiry proceedings. In the cross-examination, she admitted that vide letter Ex. P-5, the petitioner was promoted in appreciation of his performance and letters Ex. P-6 & Ex. P-7 were also issued by the company through Vice President (works). She admitted that in Ex. P-6 & Ex. P-7, there is only mention regarding the beatings of Mr. Hardev Sharma. She further admitted that in Ex. P-11, an additional charge of outraging the modesty of Smt. Sushma Sharma had been framed. She further admitted that the complaint of Shri Hardev Sharma had been forwarded to the Police by the respondent and the complaint made by Smt Sushma Sharma had not been forwarded to the Police by the respondent. She denied that the complaint made by Smt. Sushma Sharma was a procured complaint under the influence of management.

12. RW-2, Shri Ramnik Sharma, enquiry officer, has stated that he was appointed as enquiry officer by the respondent company to conduct a joint enquiry against Naveen Kumar and Narender Kumar as per letter Ex. RW/D. Vide letters Ex. RW-2/A and Ex. RW-2/B, he intimated the date of enquiry to the petitioner as well as respondent and on the first date of enquiry he had asked the petitioner whether copy of chargesheet and standing orders had been received by him to which he replied that the same had already been supplied to him. The copy of day to day enquiry proceedings is Ex. R-9. He explained the procedure of the enquiry to the petitioner. On 26.7.2004, he submitted the enquiry report Ex. RA-11 and the charges as leveled vide chargesheet against the worker were duly proved during enquiry. He conducted the enquiry as per the principles of natural justice and fair hearing and day to day enquiry proceedings were given/supplied to the petitioner on which he (petitioner) had also appended his signatures, on order sheets. In the cross-examination, he stated that he had gone through all the chargesheets and documents of these two cases after his appointment as enquiry officer. He denied that his enquiry report is totally biased against the worker.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that initially the petitioner was appointed on temporary basis as trainee operator vide appointment letter Ex. P-2, and his services had been regularized w.e.f. 1.4.2000, as operator, vide letter Ex. P-3. Thereafter, the services of the petitioner had been confirmed as operator w.e.f. 1.10.2000, vide Ex. P-H and he was promoted as senior operator w.e.f. 1.4.2003

vide Ex. P-5. It is also the admitted case of the parties that the services of the petitioner had been terminated after the enquiry was conducted against him.

14. The only plea which has been taken by the petitioner is that the enquiry conducted by the enquiry officer was not fair as the principles of natural justice were not complied with and the enquiry was not conducted in accordance with law as such the enquiry report is liable to be set aside. Now, the first question which arises for consideration before this Court is as to whether the enquiry against the petitioner has been conducted in a manner inconsistent with the principles of natural justice or the same has not been conducted in accordance with law.

15. It is by now well settled that the Court/Tribunal in its power of judicial review does not act as an Appellate Court to re-appreciate the evidence led in the domestic enquiry. The Court will not interfere with the findings of the fact recorded in departmental enquiry except where such findings are based on no evidence or they are clearly perverse. The Court will however interfere with the findings, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, malafide or based upon extraneous considerations. **In (1995) 6 SCC 749, titled as B.C Chaturvedi Vs. Union of India and others**, the Hon'ble Apex Court has held as under:

**“12.....The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.**

16. However, in the present case the plea of the petitioner that enquiry has not been conducted in accordance with law or the principles of natural justice were not complied with cannot be accepted in the light of the overwhelming evidence on record led by the respondent. As per the statement of RW-1, Smt. Anuradha Jamwal, Personnel Officer, the respondent issued a show cause notice-cumchargesheet dated 8.5.2004, in English and Hindi which was duly received by the petitioner wherein charges of intimidation and threatening of a co-worker, indulging in riotous, disordering behavior and indulging in the activity of eve-teasing and out raging the modesty of a female employee, were leveled against him. She further deposed that reply to the chargesheet was filed by the petitioner and being dissatisfied with the reply, the respondent decided to conduct a domestic enquiry and Mr. Ramneek Sharma was appointed as an enquiry officer.

17. RW-2, Shri Ramneek Sharma, the enquiry officer specifically deposed that he intimated the date of enquiry to the petitioner as well as the respondent and on the first date of enquiry he had asked the petitioner as to whether he had received the copy of chargesheet and standing orders to which the petitioner told him that he had already been supplied all these documents. He further deposed that the procedure of enquiry was explained to the petitioner and even the standing orders of the respondent company were read over and explained to the petitioner. He also deposed that thereafter on different dates he had examined the witnesses of both the parties and the copies of the statements of the witnesses so recorded, were handed-over to the petitioner and to this effect his signatures were also obtained. He further deposed that on each statement of the witnesses, he obtained the signatures of delinquent/petitioner and thereafter he submitted the enquiry report dated 26.7.2004, Ex. RA-11. He also deposed that the enquiry had been conducted as per the natural justice and fair hearing and the charges as leveled vide chargesheet against the

petitioner were duly proved in the enquiry. Both the witnesses were cross-examined at length by the petitioner, however, nothing favourable could be elicited from their lengthy cross-examination. Moreover, in his cross-examination, the petitioner himself admitted that he had received the chargesheet which was duly replied by him and a letter Ex. R-7 regarding conducting domestic enquiry was also received by him. He also admitted that the enquiry officer intimated him about the date of enquiry and he (enquiry officer) explained him the entire procedure of enquiry on the first date of enquiry. He further admitted that he participated in the enquiry and cross-examined the management witnesses and had signed each enquiry proceedings. He also admitted that he examined Shri Naveen Kumar in his evidence before the enquiry officer. He also admitted that he received second show cause notice along-with enquiry report and complete copy of standing orders. He further admitted that he was told by the management that he was entitled to be assisted by any co-worker as per standing orders. He also admitted that he did not make any complaint in writing that the enquiry officer was conducting one sided enquiry.

18. Hence, from the perusal of the statements of RW-1 and RW-2, coupled with the cross-examination of the petitioner, it stands duly proved on record that the petitioner had participated in the enquiry and signed the proceedings on each and every date and a reasonable opportunity was given to the petitioner to cross-examine the witnesses of the management as well as to bring his own witnesses in defence. From the perusal of the record, it cannot be said that the principles of natural justice were not complied with or no proper opportunity of being heard was afforded to the petitioner. It also cannot be said that the enquiry officer was biased in any manner. I have also perused the enquiry report Ex. R-11 minutely and did not find anything wrong with it. There is no reason to disbelieve the enquiry report. The charges of misconduct leveled vide chargesheets dated 8.5.2004, Ex. R-3 and 12.5.2004, Ex. R-4, stood duly proved against the petitioner.

19. Now, the next question which arises for consideration before this Court is as to whether the punishment awarded to the petitioner is disproportionate to the gravity of misconduct or is not commensurate with the charges proved against the petitioner. **In (2005) 3 SCC 134 titled as Mahindra and Mahindra Ltd. Vs. N.B Narawade**, the Hon'ble Supreme Court has held that after introduction of section 11-A in the Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct but this discretion is certainly not unlimited and has to be exercised judiciously. The relevant portion of the aforesaid ruling reads as under:

**“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.”**

20. In the case in hand the petitioner has been found guilty of physically assaulting and injuring his co-worker and also sexually harassing his woman co-worker at work place which



amounts to misconduct and consequently he was terminated/dismissed from service. **In (2005) 3 SCC 401 titled as M.P Electricity Board Vs. Jagdish Chandra Sharma**, it has been held by the Hon'ble Apex Court that where an employee assaulted and injured his superior officer at the work place, in the presence of other employees, the act amounted to breach of indiscipline in the organization and in such case the punishment of dismissal cannot be termed unduly harsh or disproportionate. The relevant portion of the aforesaid ruling reads as under:

**“9..... Obviously this idea is more relevant in considering the working of an organization like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion.”**

21. **In (1991) 1 SCC 759, titled as Apparel Export Promotion Council Vs. A.K Chopra**, it has been held by the Hon'ble Apex Court that sexual harassment at work place of female employee resulted in violation of the fundamental rights to gender equality and the right of life and liberty which needs to be eliminated and there can be no compromise with such violation. Relevant portion of the aforesaid ruling reads as under:

**“26. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India..... That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.**

**28..... There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant, was, thus, commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review”.**

22. Therefore, in view of the aforesaid judgments and also in view of the facts and circumstances of the present case, it cannot be said that the punishment imposed upon the petitioner is disproportionate to the gravity of misconduct or is not commensurate with the charges proved against the petitioner as such the same does not call for any interference by this Court. Thus, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent, who was rightly chargesheeted in accordance with law and was afforded full opportunity to defend himself before enquiry officer and after the conclusion of enquiry, the petitioner was found guilty of misconduct and consequently he was terminated/dismissed from service and therefore, it does not lie in the mouth of the petitioner to say that his services have been terminated without holding proper and fair domestic enquiry as per the principles of natural justice. Accordingly, issue No. 1 is decided in favour of the respondent and against the petitioner.

**Issue No. 2**

23. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

**Issue No. 3.**

24. In support of this issue, no evidence was led by the respondent. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Hence, this issue is decided in favour of the petitioner and against the respondent.

**Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 7th October, 2015.

By order,  
(SUSHIL KUKREJA)  
*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

Ref. 22 of 2015

**Sh Ishwar Dass V/s Ex.Engg I&PH Division Reckong Peo**

**Case called again after lunch.**

**16.10.2015**

Present: None for the petitioner.  
Sh. JagdishRajta Id. ADA for respondent.

It is 2:50 PM. Case called several times in pre and post lunch sessions but none has appeared on behalf of the petitioner. The reference for adjudication sent by the appropriate government is as under:--

**“Whether non-regularization of the services of Sh. IshwarDass S/O Sh. Sanpur, VPO Chagaon, Tehsil Nichar, Distt. Kinnaur, H.P. by the Executive Engineer, I & PH Division, Reckongpeo, Distt. Kinnaur, H.P. on completion of 8 years of continuous services as per policy of H.P. Govt., as alleged by the workman is legal and justified? If not, what relief of regularization and consequential monetary benefits the aggrieved workman is entitled to from the employer?”**

At the very outset, I would like to point out that the case was called several times during the pre-lunch session as well as the post-lunch session, however, neither the petitioner nor his counsel appeared before this court. In these circumstances, this court decided to answer the reference on the basis of the material, whatsoever, available on the record. No statement of claim has come on record on the behalf of the petitioner and the respondent also did not file any reply, pursuance to the reference which has been made by the appropriate government. The petitioner as well as his Ld. Counsel has also failed to appear before this court despite the case having been called several

times. There is no material on record, whatsoever, which may go to substantiate the contention of the petitioner that on completion of 8 years of continuous service, his services have not been regularized as per the policy of the H.P. government. Hence, in the absence of any material on record, this reference deserves to be answered against the petitioner. With these observations, the reference is answered in the negative. Let the copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today, which is dated 16.10.2015.

Announced:

16.10.2015

By order,  
(SUSHILKUKERJA),  
*Presiding Judge, Labour Court, Shimla.*

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**Ref.18 of 2015**

**Sh Daulat Ram V/s DFO Renuka ,Sirmour.**

15.10.2015

Present: Sh. R.K. Khidtta, Advocate for the petitioner.  
Sh. Jagdish Rajta, ADA for respondent.

At this stage, an application has been filed by the Ld. Csl, for the petitioner with the averments that the petitioner has filed the demand notice against the illegal termination of his services but the same was not referred as reference to this Court within the period of 45 days and as such the petitioner filed the claim under Section 2-A of the Industrial Disputes Act 1947 (hereinafter referred to as Act) directly, which was allowed vide award/ order dated 2.1.2015. Now, the appropriate government has sent his case as a reference to this Court. It has further been submitted that as per the award passed by this Court on his application under section 2-A of the Act, the applicant has been re-engaged by the respondent w.e.f 26.0.2015 and is presently working with the respondent.

I have heard the Ld. Csl. for the petitioner and Ld.ADA for the respondent and also gone through the material on record. As per the averments of the petitioner himself, he has been reinstated in service by the respondent vide award/order dated 2.1.2015 passed by this Court in application No-66 of 2012 and after the passing of the award, he has been re-engaged with effect from 26.9.2015. The application is duly supported with the affidavit of the petitioner. The copy of the award dated 2.1.2015 as well as the joining report have also been annexed along with the application.

Therefore, the present reference which has been referred to this court by the appropriate government on the same cause of action for adjudication is ordered to be answered in favour of the petitioner in terms of the award/order dated 2.1.2015 passes in application No.66 of 2012. This order shall form part and parcel of the award/order dated 2.1.2015 passed in application No.66 of 2012 titled as Sh Daulat Ram V/s Divisional Forest Officer and another. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette, File , after completion, be consigned to records.

Announced:

15.10.2015

By order,  
(SUSHIL KUKREJA)  
*Presiding Judge Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUMLABOUR COURT, SHIMLA**

Ref no. 58 of 2010.

Instituted on 1.5.2010.

Decided on 16.10.2015.

HP. Krishan Lal S/o Shri DAulat Ram R/o Village Shallu, P.O Roudi, Tehsil & District Shimla,  
...*Petitioner.*

*V/S.*

1. The State of Himachal Pradesh through the Secretary Forest with Headquarter at Shimla.
2. The Principal Chief Conservator of Forests, Himachal Pradesh Shimla (Talland), Shimla.
3. The Conservator of Forests (Wild Life) Hiamchal Pradesh with Headquarter at Hamirpur.
4. The Deputy Conservator of Forest Himachal Pradesh (D.F.O Wild Life), Khalini, Shimla- 2.
5. The Range Officer, Wild Life, Khalini, Shimla-171002. ...*Respondents.*

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri Hemant Vaid, Advocate

For respondent : Shri Devender Chandel, ADA.

***AWARD***

The reference for adjudication, sent by the appropriate government, is as under:--

***“Whether the termination of the services of Shri Krishan Lal S/o Shri Daulat Ram by the Chief Conservator of Forests, Hiamchal Pradesh Shimla-1, ii) the Conservator of Forests, (Wild Life) Hamirpur, HP w.e.f. 11.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and compensation the above aggrieved workman is entitled to?”***

2. In nutshell, the case of the petitioner is that in the month of Jan., 1995, he had joined as daily wage labourer in a wing of the Forest Department known as Environment Conservation Operation in the wild life Division-4 (hereinafter referred to as ECO) for the work of plantation, check dam, construction of parks etc. and the salary of the petitioner was drawn from the forest department. It is stated that the services of the regular employees as well as daily wages labourers of the ECO were inter transferable with the similar employees of the forest department and several daily wages labourers had been shifted to the wild life from the ECO department in the last several years. It is further stated that on 11.2.2000, the forest department and its ECO wing disengaged the applicant from service and thereafter an OA no. 1538 of 2000 was filed by the petitioner before the Administrative Tribunal wherein a direction was given to treat the same as representation by the State of Himachal Pradesh through the Secretary Forest and others. The petitioner appeared before the Principal Chief Conservator of Forests, who dismissed the matter vide common order no. 619 of 2000 on 7.11.2000. Then the petitioner moved another OA no. 690 of 2001 against the aforesaid order dated 7.11.2000 before the HP Administrative Tribunal, which was disposed of on 3.3.2006 holding that the matter of dispute related to Industrial Disputes Act, 1947 (hereinafter referred as Act) and it has no jurisdiction to entertain the matter. It is further stated that thereafter the petitioner made a demand before the Labour Officer as required under the Act by issuing a notice but the conciliation proceedings failed and the matter was referred to this Court for adjudication. The juniors to the petitioner namely Man Bahadur, Surya Prakash, Jeet Ram, Duni Chand, Jai Kishan, Ishwar Dass and Bhagat Ram, are still working with the respondent and as such the termination of the services of the petitioner as daily wages labourers is in violation of the provisions of section 25-G of the Act. The petitioner had completed more than 240 days in a year and his termination without serving any show cause notice of one month and without paying retrenchment compensation is in violation of the provisions of section 25-F of the Act. The services of the petitioner have been dispensed with by the Range Officer, who was not the appointing authority of the daily wage workers. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated in service with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections qua jurisdiction and that the work on which the petitioner was engaged was being carried out exclusively under Foreign Aided Project called Eco-Development NORAD Project (hereinafter referred to as Project) and the respondent department was only executing agency. Due to non-availability of funds, the Project came to a closer and the services of all the daily wagers including petitioner had been automatically disengaged. On merits, it has been admitted that the petitioner had been engaged on daily wages basis as per requirement of seasonal work w.e.f. September, 1995, in the Project. It is denied that the petitioner was engaged in Jan., 1995. It is stated that the Project was a foreign aided project which was being executed by Wild Life Division of Forest Department and as such the workers deployed in this Project were paid wages from the Project funds and not by Forest Department. The regular employees working in the Project were deployed from the forest department for execution of Project work purely on secondment basis and some of daily wagers, who were disengaged were re-engaged as per orders passed by the Administrative Tribunal. It is admitted that the representation of petitioner had been rejected by the Principal Chief Conservator on 7.11.2000. It is admitted that four junior daily wagers namely S/Shri Man Bahadur, Surya Parkash, Jeet Ram, Ishwar Dass and Dhuni Chand daily wagers had been re-engaged as per the orders passed by the HP Administrative Tribunal and Shri Bhagat Ram was re-engaged as per the orders passed by the Hon'ble High Court. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 2.7.2011.

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 11.2.2000 is in violation of the provisions of Industrial Disputes Act, 1947? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the petition is not maintainable? ...OPR.

4. Relief.

6. I have heard the learned Counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Yes

Issue no. 2 Entitled for continuity in service but without back wages.

Issue no. 3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

8. Learned Counsel for the petitioner contended the services of the petitioner had been terminated illegally without serving any notice under section 25-F of the Act. Learned counsel further contended that the petitioner had completed more than 240 working days in each calendar year and his juniors are still working with the department.

9. On the other hand, Ld. ADA appearing on behalf of the respondents contended that the services of the petitioner had been engaged in ECO Project which was a foreign aided project and due to non-availability of funds, the Project was closed and as such the services of the petitioner stood automatically disengaged with the closer of the Project. He further contended that the juniors, had only been re-engaged as per the orders of the Courts.

10. Shri Satish Kumar, Forest Guard, has appeared into the witness box as PW-1 to depose that the petitioner had been engaged as daily wage seasonal worker on 1.3.1995 in ECO Project and no appointment letter had been issued to him. The copy of mandays chart of the petitioner is Ex. PW-1/A. Due to closer of the Project the services of the petitioner had been terminated along-with six other workers. Before terminating the services of the petitioner, he had completed more than 240 days. Similar situated person Shri Surya Prakash was engaged on 16.8.1996, whose services had now been regularized. Similarly, Jeet Ram, Duni Chand, Bhagat Ram, Prem Kumar and Om Prakesh had been engaged in ECO Project on 1.5.1996, 1.9.1997, 1.1.1995, 1.7.1995 and 1.11.1996 respectively, who were also disengaged on the completion of Project but on the orders of the Court, all the aforesaid workers had been regularized. In the cross-examination, he has stated that the ECO Project was started in the year, 1994 and closed on 31.3.2000 and the services of the petitioner had been engaged only for seasonal work of ECO Project. He stated that all the aforesaid workers had been re-engaged on the orders of the Courts.

11. Petitioner Shri Krishan Lal appeared into the witness box as PW-2 and tendered his affidavit Ex. PA in evidence, wherein he supported all the material facts as stated in the claim petition. He also tendered in evidence the certified copy of reference no. 199 of 2003, Ex. PA-1.

Ex. PA-2, is the certified copy of order passed in OA no. 690 of 2001. The copy of order passed in CWP no. 3557 of 2009 is Ex. PA-3 and the copy of order dated 7.11.2000 passed by Principal Chief Conservator of Forests, along-with detail of attendance is Ex. P-4. In cross-examination, he denied that he was engaged in ECO Project in September, 1995 but explained that he was engaged in Jan., 1995. He denied that in the year, 1996, he left the job on his own. He admitted that he was working as daily waged labourer with the department. He further admitted that the regular staff was also employed in the Project which was deployed from the forest department. He denied that the Project was not of the Forest Department. He denied that after the closer of the Project, his juniors were not retained by the department. He admitted that he was engaged as daily wagger by the forest department under the muster roll which were issued by the Range Officer.

12. To rebut the case of the petitioner, the respondents examined one Shri Harish Kumar, Deputy Ranger, as RW-1, who has stated that the petitioner was engaged as worker under the foreign aided project called ECO Development NOARD, executed by the wild life wing of the forest department. The Project started in the year 1994-95 and came to an end in March, 2000 and all the workers engaged under the aforesaid Project were disengaged along-with the petitioner, when the Project came to an end. The petitioner and other workers had been engaged purely on seasonal and temporary work. The petitioner had been engaged in the month of September, 1995 as per mandays chart Ex. RW-1/A. The wages to the petitioner were being paid out of the funds of the Project and not by the department. He further stated that some juniors to the petitioner namely Surya Parkash, Man Bahadur, Jeet Ram, Ishwar and Duni Chand had been re-engaged as per the directions of the Administrative Tribunal and one Shri Bhagat Ram was reengaged as per the orders of the Hon'ble High Court. He also deposed that since the services of the petitioner had been terminated on the termination of the Project as such there is no violation of section 25-F, 25-G and 25-H of the Act. In the cross-examination, he admitted that S/Shri Om Prakash and Prem Kumar had raised an Industrial Dispute before Labour Court and the reference petition was decided in their favour vide award Ex. PA/1. He further admitted that the petitioner had completed 240 days in a calendar year preceding his termination as per mandays chart Ex. PW-1/A. He also admitted that no notice of termination under section 25-F of the Act was issued to the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the services of the petitioner had been engaged as daily wage labourer by the respondent department in the Project and after the closer of the same (Project), his services stood terminated. It is also the admitted case of the parties that neither any notice was served upon the petitioner before his termination nor compensation in lieu of notice as prescribed under section 25-F of the Act, has been paid to him. The perusal of the mandays chart Ex. PW-1/A, goes to show that the petitioner had worked with the respondent for 56 days in the year 1995, 275 days in 1997, 346 days in 1998, and 261 days in the year, 1999. It has also been admitted by RW-1 Shri Harish Kumar, Deputy Ranger that the petitioner had completed 240 days in a calendar year preceding his termination. Now, the question which arises for consideration before this Court is as to whether on the closer of the Project, the notice under section 25-F of the Act was required to be given to the petitioner by the respondent or not. This question has been answered by the Hon'ble Supreme Court in **2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka**, wherein it has been held as under:

***“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.***

14. Therefore, having regard to the law laid down by the Hon'ble Supreme Court and keeping in view the facts and circumstances of the present case, since the petitioner had completed 240 working days in the twelve calendar months preceding his termination, it was incumbent upon

the respondents to issue notice to the petitioner and to comply with the provisions of section 25F of the Act, even, if the Project was to be closed, on its completion. At this stage, I would also like to point out that the respondents have failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, I have no hesitation in holding that the services of the petitioner had been terminated in contravention of the provisions of section 25-F of the Act. Since, the respondents have failed to comply with the provisions of section 25-F of the Act, his termination is illegal and unjustified.

15. Now, advertent to the other aspect of the case, the petitioner in his affidavit Ex. PA has averred that after his termination the respondent department has re-engaged his juniors in service, who had also worked in the Project. RW-1, Shri Harish Kumar, Deputy Ranger stated that the workers namely Suryaprakash, Man Bahadur, Jeet Ram, Ishwar and Duni Chand, who were junior to the petitioner were re-engaged as per the direction of the Administrative Tribunal. In cross-examination, he admitted that most of the labourers who have been re-engaged under the orders of the Labour Court/Administrative Tribunal were junior to the petitioner and they have been regularized. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondent department while terminating him which is clear cut violation of the provisions of section 25-G of the Act. ***In CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon'ble High Court of Himachal Pradesh has held as under:***

***“.....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment”.***

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent No. 4w.e.f. 11.2.2000 without complying with the provisions of the Act is illegal and unjustified and thus the provisions of sections 25-F, 25-G & 25-H of the Act have been violated.

Accordingly, issue no.1 is decided in affirmative.

## ***Issue no. 2.***

17. Since I have held under Issue No. 1 above that the termination of services of the petitioner by the respondents without complying with the provisions of the Act is illegal and unjustified, hence the petitioner is held entitled to re-instatement in service alongwith seniority and continuity. 18.

Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner neither pleaded nor proved that he was not gainfully employed after his retrenchment. ***In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza***, the Hon'ble Supreme Court has held that “once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement”. It has further been held by the Hon'ble Supreme Court ***in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that “full back wages cannot be



granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

19. In the present case, the petitioner only prayed for his reinstatement with backwages in his statement of claim and in his statement as PW-1. There is no cogent evidence led by the petitioner that he was not gainfully employed after his termination. The petitioner was under an obligation to plead and prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon’ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

20. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 11.2.2000. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no. 2 is partly decided in favour of the petitioner and against the respondents.

### ***Issue no. 3.***

21. In support of this Issue, neither any evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

### ***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service forth-with w.e.f. 11.2.2000, with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 16th day of October, 2015.

By order,  
(SUSHIL KUKREJA)  
*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUMLABOUR COURT, SHIMLA**

Ref no. 83 of 2009.  
Instituted on 29.10.2009.  
Decided on 16.10.2015.

Hari Chand S/o Shri Ram Saran R/o Village Bharoi, P.O Roudi, Tehsil & District Shimla,  
HP. ...Petitioner.

VS.

1. The State of Himachal Pradesh through the Secretary Forest with Headquarter at Shimla.
2. The Principal Chief Conservator of Forest Himachal Pradesh Shimla (Talland), Shimla.
3. The Conservator of Forest (Wild Life) Himachal Pradesh with Headquarter at Hamirpur.
4. The Dy. Conservator of Forests, Wild Life Division, Khalini Shimla-2.
5. The Range Officer, Wild Life, Khalini, Shimla-171002. ...Respondents.

### Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Hemant Vaid, Advocate

For respondent: Shri Devender Chandel, ADA.

### AWARD

The reference for adjudication, sent by the appropriate government, is as under:--

***“Whether termination of the services of Shri Hari Chand S/o Shri Ram Saran by the Dy. Conservator of Forests, Wild Life Division, Khalini Shimla-2 w.e.f. 11.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”***

2. In nutshell, the case of the petitioner is that in the month of Jan., 1995, he had joined as daily wage labourer in a wing of the Forest Department known as Environment Conservation Operation in the wild life Division-4 (hereinafter referred to as ECO) for the work of plantation, check dam, construction of parks etc. and the salary of the petitioner was drawn from the forest department. It is stated that the services of the regular employees as well as daily wages labourers of the ECO were inter transferable with the similar employees of the forest department and several daily wages labourers had been shifted to the wild life from the ECO department in the last several years. It is further stated that on 11.2.2000, the forest department and its ECO wing disengaged the applicant from service and thereafter an OA no. 1538 of 2000 was filed by the petitioner before the Administrative Tribunal wherein a direction was given to treat the same as representation by the State of Himachal Pradesh through the Secretary Forest and others. The petitioner appeared before the Principal Chief Conservator of Forests, who dismissed the matter vide common order no. 619 of 2000 on 7.11.2000. Then the petitioner moved another OA no. 692 of 2001 against the aforesaid order dated 7.11.2000 before the HP Administrative Tribunal, which was disposed of on 3.3.2006 holding that the matter of dispute related to Industrial Disputes Act, 1947 (hereinafter referred as Act) and it has no jurisdiction to entertain the matter. It is further stated that thereafter the petitioner made a demand before the Labour Officer as required under the Act by issuing a notice but the conciliation proceedings failed and the matter was referred to this Court for adjudication. The juniors to the petitioner namely Man Bahadur, Surya Prakash, Jeet Ram, Duni Chand, Jai Kishan, Ishwar Dass and Bhagat Ram, are still working with the respondent and as such the termination of

the services of the petitioner as daily wages labourers is in violation of the provisions of section 25-G of the Act. The petitioner had completed more than 240 days in a year and his termination without serving any show cause notice of one month and without paying retrenchment compensation is in violation of the provisions of section 25-F of the Act. The services of the petitioner have been dispensed with by the Range Officer, who was not the appointing authority of the daily wage workers. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated in service with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections qua jurisdiction and that the work on which the petitioner was engaged was being carried out exclusively under Foreign Aided Project called Eco-Development NORAD Project (hereinafter referred to as Project) and the respondent department was only executing agency. Due to non-availability of funds, the Project came to a closer and the services of all the daily wagers including petitioner had been automatically disengaged. On merits, it has been admitted that the petitioner had been engaged on daily wages basis as per requirement of seasonal work w.e.f. 1.4.1997, in the Project. It is denied that the petitioner was engaged in Jan., 1995. It is stated that the Project was a foreign aided project which was being executed by Wild Life Division of Forest Department and as such the workers deployed in this Project were paid wages from the Project funds and not by Forest Department. The regular employees working in the Project were deployed from the forest department for execution of Project work purely on secondment basis and some of daily wagers, who were disengaged were re-engaged as per orders passed by the Administrative Tribunal. It is admitted that the representation of petitioner had been rejected by the Principal Chief Conservator on 7.11.2000. It is admitted that one junior daily wager namely Shri Dhuni Chand S/O Sh. Amru Ram had been re-engaged as per the orders passed by the HP Administrative Tribunal. The respondent prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner has reaffirmed own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 5.7.2010.

1. Whether the termination of the services of the petitioner is illegal and unjustified for being in contravention of the provisions of Industrial Disputes Act, 1947 as alleged?  
...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?  
...OPP.
3. Whether this Court has no jurisdiction as alleged in preliminary objection no.1?  
...OPR.
4. Relief.

6. I have heard the learned Counsel for the petitioner and Ld. ADA for the respondents and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Yes

Issue no. 2 Entitled for continuity in service but without back wages.

Issue no. 3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no. 1***

8. Learned Counsel for the petitioner contended the services of the petitioner had been terminated illegally without serving any notice under section 25-F of the Act. Learned counsel further contended that the petitioner had completed more than 240 working days in each calendar year and his juniors are still working with the department.

9. On the other hand, Ld. ADA appearing on behalf of the respondents contended that the services of the petitioner had been engaged in ECO Project which was a foreign aided project and due to non-availability of funds, the Project was closed and as such the services of the petitioner stood automatically disengaged with the closer of the Project. He further contended that the juniors had only been re-engaged as per the orders of the Courts.

10. Shri Satish Kumar, Forest Guard, has appeared into the witness box as PW-1 to depose that the petitioner had been engaged as daily wage seasonal worker on 1.3.1995 in ECO Project and no appointment letter had been issued to him. The copy of mandays chart of the petitioner is Ex. PW-1/A. Due to closer of the Project the services of the petitioner had been terminated along-with six other workers. Before terminating the services of the petitioner, he had completed more than 240 days. Similar situated person Shri Surya Prakash was engaged on 16.8.1996, whose services had now been regularized. Similarly, Jeet Ram, Duni Chand, Bhagat Ram, Prem Kumar and Om Prakesh had been engaged in ECO Project on 1.5.1996, 1.9.1997, 1.1.1995, 1.7.1995 and 1.11.1996 respectively, who were also disengaged on the completion of Project but on the orders of the Court, all the aforesaid workers had been regularized. In the cross-examination, he has stated that the ECO Project was started in the year, 1994 and closed on 31.3.2000 and the services of the petitioner had been engaged only for seasonal work of ECO Project. He stated that all the aforesaid workers had been re-engaged on the orders of the Courts.

11. Petitioner Shri Hari Chand appeared into the witness box as PW-2 and tendered his affidavit Ex. PA in evidence, wherein he supported all the material facts as stated in the claim petition. He also tendered in evidence the certified copy of reference no. 199 of 2003, Ex. PA-1. Ex. PA-2, is the certified copy of order passed in OA no. 692 of 2001. The copy of order passed in CWP no. 3557 of 2009 is Ex. PA-3 and the copy of order dated 7.11.2000 passed by Principal Chief Conservator of Forests along-with detail of attendance, Ex. P-4. In cross-examination, he denied that he was engaged in ECO Project in the year, 1997 but volunteered that he was engaged in the year, 1995. He admitted that the said Project was for five years which was executed by the forest department under wild life. He admitted that regular staff was also employed in the Project which was deployed from the forest department. He also admitted that on the closure of the Project, he along-with other daily wagers engaged in the said project were automatically disengaged. He denied that his juniors had not been retained by the department after the closer of the Project.

12. To rebut the case of the petitioner, the respondents examined one Shri Harish Kumar, Deputy Ranger, as RW-1, who has stated that the petitioner was engaged as worker under the foreign aided project called ECO Development NOARD, executed by the wild life wing of the forest department. The Project started in the year 1994-95 and came to an end in March, 2000 and all the workers engaged under the aforesaid Project were disengaged along-with the petitioner, when the Project came to an end. The petitioner and other workers had been engaged purely on seasonal and temporary work. The petitioner had been engaged w.e.f. 1.4.1997 as per mandays

chart Ex. RW-1/A. The wages to the petitioner were being paid out of the funds of the Project and not by the department. He further stated that only Shri Duni Chand, who was junior to the petitioner had been re-engaged as per the directions of the Administrative Tribunal. He also deposed that since the services of the petitioner had been terminated on the termination of the Project as such there is no violation of section 25-F, 25-G and 25-H of the Act. In the cross-examination, he admitted that S/Shri Om Prakash and Prem Kumar had raised an Industrial Dispute before Labour Court and the reference petition was decided in their favour vide award Ex. PA/1. He further admitted that the petitioner had completed 240 days in a calendar year preceding his termination as per mandays chart Ex. PW-1/A. He also admitted that no notice of termination under section 25-F of the Act was issued to the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the services of the petitioner had been engaged as daily wage labourer by the respondent department in the Project and after the closer of the same (Project), his services stood terminated. It is also the admitted case of the parties that neither any notice was served upon the petitioner before his termination nor compensation in lieu of notice as prescribed under section 25-F of the Act, has been paid to him. The perusal of the mandays chart Ex. PW-1/A, goes to show that the petitioner had worked with the respondent for 275 days in the year 1997, 282 days in 1998, and 254 days in 1999. It has been admitted by RW-1 Shri Harish Kumar that the petitioner has completed 240 days in a calendar year preceding his termination. Now, the question which arises for consideration before this Court is as to whether on the closer of the Project, the notice under section 25-F of the Act was required to be given to the petitioner by the respondents or not. This question has been answered by the Hon'ble Supreme Court in **2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka**, wherein it has been held as under:

***“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.***

14. Therefore, having regard to the law laid down by the Hon'ble Supreme Court and keeping in view the facts and circumstances of the present case, since the petitioner had completed 240 working days in the twelve calendar months preceding his termination, it was incumbent upon the respondents to issue notice to the petitioner and to comply with the provisions of section 25-F of the Act, even, if the Project was to be closed, on its completion. At this stage, I would also like to point out that the respondents have failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, I have no hesitation in holding that the services of the petitioner had been terminated in contravention of the provisions of section 25-F of the Act. Since, the respondents have failed to comply with the provisions of section 25-F of the Act, his termination is illegal and unjustified.

15. Now, adverting to the other aspect of the case, the petitioner in his affidavit Ex. PA has averred that after his termination the respondent department has re-engaged his juniors in service, who had also worked in the Project. RW-1, Shri Harish Kumar, Deputy Ranger stated that the worker namely Shri Duni Chand, who was junior to the petitioner had been re-engaged as per the direction of the Administrative Tribunal. In cross examination, he admitted that most of the labourers who have been reengaged under the orders of the Labour Court/Administrative Tribunal were junior to the petitioner and they have been regularized. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondent department

while terminating him which is clear cut violation of the provisions of section 25-G of the Act. **In CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon'ble High Court of Himachal Pradesh has held as under:**

***“.....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment”.***

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent No. 4 w.e.f. 11.2.2000 without complying with the provisions of the Act is illegal and unjustified and thus the provisions of sections 25-F, 25-G & 25-H of the Act have been violated.

Accordingly, issue no.1 is decided in affirmative.

### **Issue no. 2.**

17. Since I have held under Issue No. 1 above that the termination of services of the petitioner by the respondents without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to re-instatement in service alongwith seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner neither pleaded nor proved that he was not gainfully employed after his retrenchment. **In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that “once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement”. It has further been held by the Hon'ble Supreme Court **in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that “full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

19. In the present case, the petitioner only prayed for his reinstatement with backwages in his statement of claim and in his statement as PW-1. There is no cogent evidence led by the petitioner that he was not gainfully employed after his termination. The petitioner was under an obligation to plead and prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

***“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”***

20. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 11.2.2000. Therefore, in view of the entire evidence, on record, coupled with the rulings

(supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no. 2 is partly decided in favour of the petitioner and against the respondent.

**Issue no. 3.**

21. An objection has been taken by the respondents that the forest department is not an industry but this objection does not hold good in view of the law laid down by the *Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa* in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act, especially in case of the daily wage workers. Consequently, this issue is answered in negative.

**Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service forth-with w.e.f. 11.2.2000, with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 16th day of October, 2015.

By order,  
(SUSHIL KUKREJA)  
*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUMLABOUR COURT, SHIMLA**

Ref no. 84 of 2009.  
Instituted on 29.10.2009.  
Decided on 16.10.2015.

Jai Singh S/o Shri Thakur Dass R/o Village Jablog, P.O Roudi, Tehsil & District Shimla,  
HP. ...Petitioner.

*VS.*

1. The State of Himachal Pradesh through the Secretary Forest with Headquarter at Shimla.
2. The Principal Chief Conservator of Forest Himachal Pradesh Shimla (Talland), Shimla.
3. The Conservator of Forest (Wild Life) Himachal Pradesh with Headquarter at Hamirpur.

4. The Deputy Conservator of Forests Himachal Pradesh, (D.F.O Wild Life), Khalini Shimla-2.
5. The Range Officer, Wild Life, Khalini, Shimla-171002. ...Respondents.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri Hemant Vaid, Advocate

For respondent : Shri Devender Chandel, ADA.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:--

***“Whether termination of the services of Shri Jai Singh S/o Shri Thakur Dass by the Dy. Conservator of Forests, Wild Life Division, Khalini Shimla-2 w.e.f. 11.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”***

2. In nutshell, the case of the petitioner is that in the month of Jan., 1995, he had joined as daily wage labourer in a wing of the Forest Department known as Environment Conservation Operation in the wild life Division-4 (hereinafter referred to as ECO) for the work of plantation, check dam, construction of parks etc. and the salary of the petitioner was drawn from the forest department. It is stated that the services of the regular employees as well as daily wages labourers of the ECO were inter transferable with the similar employees of the forest department and several daily wages labourers had been shifted to the wild life from the ECO department in the last several years. It is further stated that on 11.2.2000, the forest department and its ECO wing disengaged the applicant from service and thereafter an OA no. 1538 of 2000 was filed by the petitioner before the Administrative Tribunal wherein a direction was given to treat the same as representation by the State of Himachal Pradesh through the Secretary Forest and others. The petitioner appeared before the Principal Chief Conservator of Forests, who dismissed the matter vide common order no. 619 of 2000 on 7.11.2000. Then the petitioner moved another OA no. 745 of 2001 against the aforesaid order dated 7.11.2000 before the HP Administrative Tribunal, which was disposed of on 10.1.2006 holding that the matter of dispute related to Industrial Disputes Act, 1947 (hereinafter referred as Act) and it has no jurisdiction to entertain the matter. It is further stated that thereafter the petitioner made a demand before the Labour Officer as required under the Act by issuing a notice but the conciliation proceedings failed and the matter was referred to this Court for adjudication. The juniors to the petitioner namely Man Bahadur, Surya Prakash, Jeet Ram, Duni Chand, Jai Kishan, Ishwar Dass and Bhagat Ram, are still working with the respondent and as such the termination of the services of the petitioner as daily wages labourers is in violation of the provisions of section 25-G of the Act. The petitioner had completed more than 240 days in a year and his termination without serving any show cause notice of one month and without paying retrenchment compensation is in violation of the provisions of section 25-F of the Act. The services of the petitioner have been dispensed with by the Range Officer, who was not the appointing authority of the daily wage workers. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated in service with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections qua jurisdiction and that the work on which the petitioner was engaged was being carried out exclusively under Foreign Aided Project called Eco-Development NORAD Project (hereinafter



referred to as Project) and the respondent department was only executing agency. Due to non-availability of funds, the Project came to a closer and the services of all the daily wagers including petitioner had been automatically disengaged. On merits, it has been admitted that the petitioner had been engaged on daily wages basis as per requirement of seasonal work w.e.f. September, 1995, in the Project. It is denied that the petitioner was engaged in Jan., 1995. It is stated that the Project was a foreign aided project which was being executed by Wild Life Division of Forest Department and as such the workers deployed in this Project were paid wages from the Project funds and not by Forest Department. The regular employees working in the Project were deployed from the forest department for execution of Project work purely on secondment basis and some of daily wagers, who were disengaged were re-engaged as per orders passed by the Administrative Tribunal. It is admitted that the representation of petitioner had been rejected by the Principal Chief Conservator on 7.11.2000. It is admitted that four junior daily wagers namely S/Shri Surya Parkash, Jeet Ram, Ishwar Dass and Duni Chand daily wagers had been re-engaged as per the orders passed by the HP Administrative Tribunal and Shri Bhagat Ram was re-engaged as per the orders passed by the Hon'ble High Court. The respondent prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner has reaffirmed own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 5.7.2010.

1. Whether the termination of the services of the petitioner is illegal and unjustified for being in contravention of the provisions of Industrial Disputes Act, 1947 as alleged?

...OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?

...OPP.

3. Whether this Court has no jurisdiction as alleged in preliminary objection no.1?

...OPR.

4. Relief.

6. I have heard the learned Counsel for the petitioner and Ld. ADA for the respondents and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes

Issue no.2 Entitled for continuity in service but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

8. Learned Counsel for the petitioner contended the services of the petitioner had been terminated illegally without serving any notice under section 25-F of the Act. Learned counsel further contended that the petitioner had completed more than 240 working days in each calendar year and his juniors are still working with the department.

9. On the other hand, Ld. ADA appearing on behalf of the respondents contended that the services of the petitioner had been engaged in ECO Project which was a foreign aided project and due to non-availability of funds, the Project was closed and as such the services of the petitioner stood automatically disengaged with the closer of the Project. He further contended that the juniors had only been re-engaged as per the orders of the Courts.

10. Shri Satish Kumar, Forest Guard, has appeared into the witness box as PW-1 to depose that the petitioner had been engaged as daily wage seasonal worker on 1.3.1995 in ECO Project and no appointment letter had been issued to him. The copy of mandays chart of the petitioner is Ex. PW-1/A. Due to closer of the Project the services of the petitioner had been terminated along-with six other workers. Before terminating the services of the petitioner, he had completed more than 240 days. Similar situated person Shri Surya Prakash was engaged on 16.8.1996, whose services had now been regularized. Similarly, Jeet Ram, Duni Chand, Bhagat Ram, Prem Kumar and Om Prakesh had been engaged in ECO Project on 1.5.1996, 1.9.1997, 1.1.1995, 1.7.1995 and 1.11.1996 respectively, who were also disengaged on the completion of Project but on the orders of the Court, all the aforesaid workers had been regularized. In the cross-examination, he has stated that the ECO Project was started in the year, 1994 and closed on 31.3.2000 and the services of the petitioner had been engaged only for seasonal work of ECO Project. He stated that all the aforesaid workers had been re-engaged on the orders of the Courts.

11. Petitioner Shri Jai Singh appeared into the witness box as PW-2 and tendered his affidavit Ex. PA in evidence, wherein he supported all the material facts as stated in the claim petition. He also tendered in evidence the certified copy of reference no. 199 of 2003, Ex. PA-1. Ex. PA-2, is the certified copy of order passed in OA no. 745 of 2001. The copy of order passed in CWP no. 3557 of 2009 is Ex. PA-3 and the copy of order dated 7.11.2000 passed by Principal Chief Conservator of Forests along-with detail of attendance, Ex. P-4. In cross-examination, he denied that he was engaged initially during September, 1995 and not in Jan., 1995. He admitted that he was engaged in ECO Project. He has no knowledge that he was engaged in a foreign aided project named as ECO (NOARD) Project. He admitted that he used to get the daily wages not the salary. He expressed his ignorance whether the services of regular employees and the daily wager were inter transferable with the similar employees of the Forest Department. He also admitted that on the closure of the Project, he along-with other daily wagers engaged in the said project were automatically disengaged. He denied that his juniors had not been retained by the department after the closer of the Project.

12. To rebut the case of the petitioner, the respondent examined one Shri Harish Kumar, Deputy Ranger, as RW-1, who has stated that the petitioner was engaged as worker under the foreign aided project called ECO Development NOARD, executed by the wild life wing of the forest department. The Project started in the year 1994-95 and came to an end in March, 2000 and all the workers engaged under the aforesaid Project were disengaged along-with the petitioner, when the Project came to an end. The petitioner and other workers had been engaged purely on seasonal and temporary work. The petitioner had been engaged in the month of September, 1995 as per mandays chart Ex. RW-1/A. The wages to the petitioner were being paid out of the funds of the Project and not by the department. He further stated that some juniors to the petitioner namely Surya Parkash, Jeet Ram, Ishwar and Duni Chand had been re-engaged as per the directions of the Administrative Tribunal and one Shri Bhagat Ram was re-engaged as per the orders of the Hon'ble High Court. He also deposed that since the services of the petitioner had been terminated on the termination of the Project as such there is no violation of section 25-F, 25-G and 25-H of the Act. In the cross-examination, he admitted that S/Shri Om Prakash and Prem Kumar had raised an Industrial Dispute before Labour Court and the reference petition was decided in their favour vide award Ex. PA/1. He further admitted that the petitioner had completed 240 days in a calendar year

preceding his termination as per mandays chart Ex. PW-1/A. He also admitted that no notice of termination under section 25-F of the Act was issued to the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the services of the petitioner had been engaged as daily wage labourer by the respondent department in the Project and after the closer of the same (Project), his services stood terminated. It is also the admitted case of the parties that neither any notice was served upon the petitioner before his termination nor compensation in lieu of notice as prescribed under section 25-F of the Act, has been paid to him. The perusal of the mandays chart Ex. PW-1/A, goes to show that the petitioner had worked with the respondent for 45 days in the year 1995, 149 days in 1997, 269 days in 1998 and 281 days in 1999. It has been admitted by RW-1 Shri Harish Kumar that the petitioner has completed 240 days in a calendar year preceding his termination. Now, the question which arises for consideration before this Court is as to whether on the closer of the Project, the notice under section 25-F of the Act was required to be given to the petitioner by the respondents or not. This question has been answered by the Hon'ble Supreme Court in **2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka**, wherein it has been held as under:

***“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.***

14. Therefore, having regard to the law laid down by the Hon'ble Supreme Court and keeping in view the facts and circumstances of the present case, since the petitioner had completed 240 working days in the twelve calendar months preceding his termination, it was incumbent upon the respondents to issue notice to the petitioner and to comply with the provisions of section 25-F of the Act, even, if the Project was to be closed, on its completion. At this stage, I would also like to point out that the respondents have failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, I have no hesitation in holding that the services of the petitioner had been terminated in contravention of the provisions of section 25-F of the Act. Since, the respondents have failed to comply with the provisions of section 25-F of the Act, his termination is illegal and unjustified.

15. Now, advertent to the other aspect of the case, the petitioner in his affidavit Ex. PA has averred that after his termination the respondent department has re-engaged his juniors in service, who had also worked in the Project. RW-1, Shri Harish Kumar, Deputy Ranger stated that the workers namely Suryaprakash, Jeet Ram, Ishwar and Duni Chand, who were junior to the petitioner were reengaged as per the direction of the Administrative Tribunal. In cross-examination, he admitted that most of the labourers who have been re-engaged under the orders of the Labour Court/Administrative Tribunal were junior to the petitioner and they have been regularized. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondent department while terminating him which is clear cut violation of the provisions of section 25-G of the Act. **In CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon'ble High Court of Himachal Pradesh has held as under:**

***“.....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment”.***

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent No. 4w.e.f. 11.2.2000 without complying with the provisions of the Act is illegal and unjustified and thus the provisions of sections 25-F, 25-G & 25-H of the Act have been violated. Accordingly, issue no.1 is decided in affirmative

### ***Issue no. 2***

17. Since I have held under Issue No.1 above that the termination of services of the petitioner by the respondents without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to re-instatement in service alongwith seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner neither pleaded nor proved that he was not gainfully employed after his retrenchment. **In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that "once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement". It has further been held by the Hon'ble Supreme Court **in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that "full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

19. In the present case, the petitioner only prayed for his reinstatement with backwages in his statement of claim and in his statement as PW-1. There is no cogent evidence led by the petitioner that he was not gainfully employed after his termination. The petitioner was under an obligation to plead and prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

**"16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim....."**

20. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 11.2.2000. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

### ***Issue no. 3.***

21. An objection has been taken by the respondents that the forest department is not an industry but this objection does not hold good in view of the law laid down by the **Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A.**

**Rajappa** in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act, especially in case of the daily wage workers. Consequently, this issue is answered in negative.

***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service forth-with w.e.f. 11.2.2000, with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 16th day of October, 2015.

(SUSHIL KUKREJA)  
*Presiding Judge, Industrial Tribunal-cum-  
 Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
 TRIBUNAL-CUMLABOUR COURT, SHIMLA**

Ref no. 85 of 2009.

Instituted on 29.10.2009.

Decided on 16.10.2015.

Satish Kumar S/o Shri Lachmi Singh R/o Village Jablog, P.O Roudi, Tehsil & District Shimla, HP. *...Petitioner.*

*VS.*

1. The State of Himachal Pradesh through the Secretary Forest with Headquarter at Shimla.
2. The Principal Chief Conservator of Forest Himachal Pradesh Shimla (Talland), Shimla.
3. The Conservator of Forest (Wild Life) Himachal Pradesh with headquarter at Hamirpur.
4. The Dy. Conservator of Forest, Himachal Pradesh, DFO Wild Life Khalini Shimla-2.
5. The Range Officer, Wild Life Khalini, Shimla-171002. *...Respondents.*

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner: Shri Hemant Vaid, Advocate

For respondents: Shri Devender Chandel, ADA.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:--

***“Whether termination of the services of Shri Satish Kumar S/o Shri Lachhmi Singh by the Dy.Conservator of Forests, Wild Life Division, Khalini Shimla-2 w.e.f. 27.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”***

2. In nutshell, the case of the petitioner is that in the month of Jan., 1995, he had joined as daily wage labourer in a wing of the Forest Department known as Environment Conservation Operation in the wild life Division-4 (hereinafter referred to as ECO) for the work of plantation, check dam, construction of parks etc. and the salary of the petitioner was drawn from the forest department. It is stated that the services of the regular employees as well as daily wages labourers of the ECO were inter transferable with the similar employees of the forest department and several daily wages labourers had been shifted to the wild life from the ECO department in the last several years. It is further stated that on 11.2.2000, the forest department and its ECO wing disengaged the applicant from service and thereafter an OA no. 1538 of 2000 was filed by the petitioner before the Administrative Tribunal wherein a direction was given to treat the same as representation by the State of Himachal Pradesh through the Secretary Forest and others. The petitioner appeared before the Principal Chief Conservator of Forests, who dismissed the matter vide common order no. 619 of 2000 on 7.11.2000. Then the petitioner moved another OA no. 746 of 2001 against the aforesaid order dated 7.11.2000 before the HP Administrative Tribunal, which was disposed of on 10.1.2006 holding that the matter of dispute related to Industrial Disputes Act, 1947 (hereinafter referred as Act) and it has no jurisdiction to entertain the matter. It is further stated that thereafter the petitioner made a demand before the Labour Officer as required under the Act by issuing a notice but the conciliation proceedings failed and the matter was referred to this Court for adjudication. The juniors to the petitioner namely Man Bahadur, Surya Prakash, Jeet Ram, Duni Chand, Jai Kishan, Ishwar Dass and Bhagat Ram, are still working with the respondent and as such the termination of the services of the petitioner as daily wages labourers is in violation of the provisions of section 25-G of the Act. The petitioner had completed more than 240 days in a year and his termination without serving any show cause notice of one month and without paying retrenchment compensation is in violation of the provisions of section 25-F of the Act. The services of the petitioner have been dispensed with by the Range Officer, who was not the appointing authority of the daily wage workers. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated in service with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections qua jurisdiction and that the work on which the petitioner was engaged was being carried out exclusively under Foreign Aided Project called Eco-Development NORAD Project (hereinafter referred to as Project) and the respondents department was only executing agency. Due to non-availability of funds, the Project came to a closer and the services of all the daily wagers including petitioner had been automatically disengaged. On merits, it has been admitted that the petitioner had been engaged on daily wages basis as per requirement of seasonal work w.e.f. 1.3.1995, in the Project. It is denied that the petitioner was engaged in Jan., 1995. It is stated that the Project was a foreign aided project which was being executed by Wild Life Division of Forest Department and as such the workers deployed in this Project were paid wages from the Project funds and not by Forest Department. The regular employees working in the Project were deployed from the forest department for execution of Project work purely on secondment basis and some of daily wagers, who were disengaged were re-engaged as per orders passed by the Administrative Tribunal. It is

admitted that the representation of petitioner had been rejected by the Principal Chief Conservator on 7.11.2000. It is admitted that four junior daily wagers namely S/Shri Surya Parkash, Jeet Ram, Ishwar Dass and Duni Chand daily wagers had been re-engaged as per the orders passed by the HP Administrative Tribunal and Shri Bhagat Ram was re-engaged as per the orders passed by the Hon'ble High Court. The respondent prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner has reaffirmed own allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 5.7.2010.

5. Whether the termination of the services of the petitioner is illegal and unjustified for being in contravention of the provisions of Industrial Disputes Act, 1947 as alleged?

...OPP.

6. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?

...OPP.

7. Whether this Court has no jurisdiction as alleged in preliminary objection no.1?

...OPR.

8. Relief.

6. I have heard the learned Counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Yes

Issue no. 2 Entitled for continuity in service but without back wages.

Issue no. 3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

8. Learned Counsel for the petitioner contended the services of the petitioner had been terminated illegally without serving any notice under section 25-F of the Act. Learned counsel further contended that the petitioner had completed more than 240 working days in each calendar year and his juniors are still working with the department.

9. On the other hand, Ld. ADA appearing on behalf of the respondents contended that the services of the petitioner had been engaged in ECO Project which was a foreign aided project and due to non-availability of funds, the Project was closed and as such the services of the petitioner stood automatically disengaged with the closer of the Project. He further contended that the juniors, had only been re-engaged as per the orders of the Courts.

10. Shri Satish Kumar, Forest Guard, has appeared into the witness box as PW-1 to depose that the petitioner had been engaged as daily wage seasonal worker on 1.3.1995 in ECO Project and no appointment letter had been issued to him. The copy of mandays chart of the petitioner is Ex.

PW-1/A. Due to closer of the Project the services of the petitioner had been terminated along-with six other workers. Before terminating the services of the petitioner, he had completed more than 240 days. Similar situated person Shri Surya Prakash was engaged on 16.8.1996, whose services had now been regularized. Similarly, Jeet Ram, Duni Chand, Bhagat Ram, Prem Kumar and Om Prakesh had been engaged in ECO Project on 1.5.1996, 1.9.1997, 1.1.1995, 1.7.1995 and 1.11.1996 respectively, who were also disengaged on the completion of Project but on the orders of the Court, all the aforesaid workers had been regularized. In the cross-examination, he has stated that the ECO Project was started in the year, 1994 and closed on 31.3.2000 and the services of the petitioner had been engaged only for seasonal work of ECO Project. He stated that all the aforesaid workers had been re-engaged on the orders of the Courts.

11. Petitioner Shri Satish Kumar appeared into the witness box as PW-2 and tendered his affidavit Ex. PA in evidence, wherein he supported all the material facts as stated in the claim petition. He also tendered in evidence the certified copy of reference no. 199 of 2003, Ex. PA-1. Ex. PA-2, is the certified copy of order passed in OA no. 746 of 2001. The copy of order passed in CWP no. 3557 of 2009 is Ex. PA-3 and the copy of order dated 7.11.2000 passed by Principal Chief Conservator of Forests, Ex. P-4. In cross-examination, he denied that in the year, 1995, he was engaged on bill and not on muster roll. He admitted that he was working as daily waged mazdoor with the department. He expressed his ignorance that the regular staff of department was deployed on secondment basis. He denied that they were neither under the wild life wing nor the wild life division Shimla. He admitted that on the closure of ECO NOARD Project, he along-with other daily wagers, engaged in the said Project, were automatically disengaged. He also denied that he had worked only for three years in the Project.

12. To rebut the case of the petitioner, the respondents examined one Shri Harish Kumar, Deputy Ranger, as RW-1, who has stated that the petitioner was engaged as worker under the foreign aided project called ECO Development NOARD, executed by the wild life wing of the forest department. The Project started in the year 1994-95 and came to an end in March, 2000 and all the workers engaged under the aforesaid Project were disengaged along-with the petitioner, when the Project came to an end. The petitioner and other workers had been engaged purely on seasonal and temporary work. The petitioner had been engaged on 1.3.1995 as per mandays chart Ex. RW-1/A. The wages to the petitioner were being paid out of the funds of the Project and not by the department. He further stated that some juniors to the petitioner namely Surya Parkash, Salig Ram, Jeet Ram, Ishwar and Duni Chand had been re-engaged as per the directions of the Administrative Tribunal and one Shri Bhagat Ram was re-engaged as per the orders of the Hon'ble High Court. He also deposed that since the services of the petitioner had been terminated on the termination of the Project as such there is no violation of section 25-F, 25-G and 25-H of the Act. In the cross-examination, he admitted that S/Shri Om Prakash and Prem Kumar had raised an Industrial Dispute before Labour Court and the reference petition was decided in their favour vide award Ex. PA/1. He further admitted that the petitioner had completed 240 days in a calendar year preceding his termination as per mandays chart Ex. PW-1/A. He also admitted that no notice of termination under section 25-F of the Act was issued to the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the services of the petitioner had been engaged as daily wage labourer by the respondent department in the Project and after the closer of the same (Project), his services stood terminated. It is also the admitted case of the parties that neither any notice was served upon the petitioner before his termination nor compensation in lieu of notice as prescribed under section 25-F of the Act, has been paid to him. The perusal of the mandays chart Ex. PW-1/A, goes to show that the petitioner had worked with the respondent for 303 days in the year 1995, 362 days in 1996, 362 days in 1997, 363 days in 1998, 331 days in 1999 and 59 days i.e up to 27.2.2000 in the year 2000. The mandays chart of petitioner also shows that in the twelve calendar months



preceding his termination, the petitioner had completed 240 days. It has been admitted by RW-1 Shri Harish Kumar that the petitioner has completed 240 days in a calendar year preceding his termination. Now, the question which arises for consideration before this Court is as to whether on the closer of the Project, the notice under section 25-F of the Act was required to be given to the petitioner by the respondent or not. This question has been answered by the Hon'ble Supreme Court in **2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka**, wherein it has been held as under:

***“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.***

14. Therefore, having regard to the law laid down by the Hon'ble Supreme Court and keeping in view the facts and circumstances of the present case, since the petitioner had completed 240 working days in the twelve calendar months preceding his termination, it was incumbent upon the respondents to issue notice to the petitioner and to comply with the provisions of section 25F of the Act, even, if the Project was to be closed, on its completion. At this stage, I would also like to point out that the respondents have failed to lead any such evidence which could go to prove that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, I have no hesitation in holding that the services of the petitioner had been terminated in contravention of the provisions of section 25-F of the Act. Since, the respondents have failed to comply with the provisions of section 25-F of the Act, his termination is illegal and unjustified.

15. Now, advertng to the other aspect of the case, the petitioner in his affidavit Ex. PA has averred that after his termination the respondent department has re-engaged his juniors in service, who had also worked in the Project. RW-1, Shri Harish Kumar, Deputy Ranger stated that the workers namely Suryaprakash, Shalig Ram, Jeet Ram, Ishwar and Duni Chand, who were junior to the petitioner were re-engaged as per the direction of the Administrative Tribunal. In cross-examination, he admitted that most of the labourers who have been re-engaged under the orders of the Labour Court/Administrative Tribunal were junior to the petitioner and they have been regularized. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondents department while terminating him which is clear cut violation of the provisions of section 25-G of the Act. ***In CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon'ble High Court of Himachal Pradesh has held as under:***

***“.....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment”.***

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent no.4 w.e.f. 27.2.2000 without complying with the provisions of the Act is illegal and unjustified and thus the provisions of sections 25-F, 25-G & 25-H of the Act have been violated.

Accordingly, issue no.1 is decided in affirmative.

**Issue no. 2**

17. Since I have held under Issue No.1 above that the termination of services of the petitioner by the respondents without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to re-instatement in service alongwith seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner neither pleaded nor proved that he was not gainfully employed after his retrenchment. **In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that "once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement". It has further been held by the Hon'ble Supreme Court **in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that "full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

19. In the present case, the petitioner only prayed for his reinstatement with backwages in his statement of claim and in his statement as PW-1. There is no cogent evidence led by the petitioner that he was not gainfully employed after his termination. The petitioner was under an obligation to plead and prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

**"16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim....."**

20. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 27.2.2000. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

**Issue no. 3.**

21. An objection has been taken by the respondents that the forest department is not an industry but this objection does not hold good in view of the law laid down by the **Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act, especially in case of the daily wage workers. Consequently, this issue is answered in negative.

**Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service forth-with w.e.f. 27.2.2000, with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 16th day of October, 2015.

(SUSHIL KUKREJA)  
*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN.**

Application No. 8 of 2012.

Instituted on.26.3.2012

Decided on 8.10.2015.

Pancham Ram S/o Shri Mithai Ram R/o A-137, Gali No.3, North Vinod Nagar, Mandawli,  
Dehli-110092, C/o Shri Om Dutt Sharma, VPO Taksal, Tehsil Kasauli, District Solan, HP.

*...Petitioner.*

*Vs.*

M/s Forge India Pvt., Ltd., Sector-5 Parwanoo, District Solan, HP, through its Factory  
Manager.

*...Respondent.*

**Claim petition under the Industrial Disputes Act, 1947.**

**For petitioner** : Shri Vibhu Banal, Advocate.

**For respondent** : Shri Alok Bhardwaj, Advocate.

**AWARD/ORDER**

The present claim petition has been filed, directly, by the petitioner stating therein that he was appointed as Operator by the respondent w.e.f. Jan., 2007 @ Rs. 7,385/- per month and as such he served in the respondent concern for almost three and half years and has completed more than 240 days as per section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred as Act). The services of the petitioner had been terminated on 6.8.2010, without giving any prior notice, reason and opportunity of being heard as per the requirement of section 25-G & 25-H of the Act. It is further stated that the petitioner had not been paid the salary for the months of July and August apart from the over-time charges. Juniors and similarly situated persons to the petitioner are working with the respondent and his services had been terminated without holding enquiry and

issuing show cause notice and chargesheet and as such the dismissal of the services of the petitioner is in violation of section 25 of the Act. Against this back-drop a prayer for reinstatement with full back-wages and other consequential service benefits has been made.

2. By filing reply, the respondent contested the claim of the petitioner wherein, preliminary objections qua maintainability, estoppel and cause of action have been raised. On merits, it is asserted that the petitioner had never been terminated but he abandoned the job at his own. The respondent had written several letters to the petitioner for resuming duties but he did not turn up. It is denied that the salary for the months of July, August and over time charges had not been paid to the petitioner. It is further asserted that the respondent has no hostility or objection if the petitioner as on today resume his service because he was never terminated by the respondent, who left the job at his own and as such the respondent prayed for the dismissal of the petition.

3. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 9.7.2013.

1. Whether the termination of the services of the petitioner w.e.f. 8.6.2010, without giving any prior notice and in violation of the requirements of section 25-G and 25-H of the Industrial disputes Act, 1947 is illegal and unjustified as alleged? ...OPP.
2. If issue no-1 is provide in affirmative to what service benefits the petitioner is entitle to? ...OPP.
3. Whether this petition is neither competent nor maintainable as alleged? ...OPR.
4. Whether this petition is time barred as alleged? ...OPR.
5. Whether the petitioner is estopped from filing this petition by his own acts, conduct etc.? ...OPR.
6. Relief.

4. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3. No.

Issue no.4 No.

Issue no.5 No.

Relief. Reference answered against the petitioner and in favour of respondent, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

6. Learned counsel for the petitioner contended that the services of the petitioner had wrongly been terminated without following the mandatory provisions of the Act. Learned counsel further contended that since the respondent had retained juniors to the petitioner, hence, there is violation of sections 25-G and 25-H of the Act.

7. On the other hand, learned counsel appearing for the respondent contended that the services of the petitioner had never been terminated by the respondent, who himself had abandoned the job without any intimation to the respondent company.

8. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A, in evidence, wherein he has reiterated all the contents as made-out by him in the claim petition including that he used to work for more than 12 hours a day but the respondent company had not paid him the salary for the months of July, August and over-time charges, which are still due to be paid and that he is un-employed. He also tendered copy of letter dated 12.8.2010, mark X written by him to the respondent. In the cross-examination, he denied that the respondent had written several letters to him regarding his absence from duties. He also denied that from 6.8.2010, he had not come to work. He denied that he himself abandoned his job. He admitted that he had approached the Labour Inspector Parwanoo after 6.8.2010. He also admitted that before Labour Inspector, Parwanoo, the respondent company had offered him to resume the duties but stated that by that time one year had elapsed. He further admitted that the respondent company had written various letters to him regarding resumption of duties after 6.8.2010. He denied that all the dues had been paid to him by the respondent company before 6.8.2010.

9. To rebut the case of the petitioner Shri Kuldeep Singh, Executive Officer, has appeared in to the witness box as RW-1 and tendered his affidavit Ex. RW-1/A in examination-in-chief. He also tendered authority letter Ex. RW-1/B. In the cross-examination, he admitted that the petitioner was working with the respondent since, 2007 till 6.8.2010. He denied that the petitioner was doing over-time. He denied that the services of the petitioner had been terminated without notice but stated that he abandoned his job on his own. He expressed his ignorance as to whether the salary for the month of July & August 2010 had been paid to the petitioner or not. He admitted that being Executive Officer, he had not written any letter to the petitioner to join his duties but explained that the respondent company had written three letters Ex. RP-2 to Ex. RP-4 thereby calling him to resume his duties but he did not turn up.

10. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as operator by the respondent company w.e.f. Jan., 2007 and worked as such till 6.8.2010. The petitioner stated as PW-1 that his services had been terminated by the respondent in an illegal manner without following the mandatory provisions of the Act. On the other hand, RW-1 Shri Kuldeep Singh, Executive Officer has deposed that the services of the petitioner had never been terminated by the company and in fact he himself had abandoned the job without any intimation. The respondent has produced on record letter dated 11.8.2010, Ex. RP-2, which shows that the petitioner was called by the respondent to resume his duties which fact has also been admitted by the petitioner in his cross-examination that the respondent company had written various letters to him regarding resumption of duties after 6.8.2010. The respondent has also placed on record reply to legal notice dated 5.2.2011, Ex. RP-4, which shows that the petitioner was also informed through his counsel that he could come & join the duty. Therefore, the perusal of the evidence and material placed on record shows that the respondent had been issuing various letters to the petitioner to resume his duties but the petitioner had not joined the same and such conduct on the part of the petitioner speaks that he himself had abandoned his job and his services were not terminated by the respondent. In a similar situation our own Hon'ble High Court in *Nagar Parishad Bilaspur Vs. Bone Ram reported in 2005 (1) Shim. LC 79* has held that where the conduct of the workman is such that he had abandoned his job, his services would stand automatically terminated in law. The relevant extract of the aforesaid judgment reads as under:

**“10..... In this background, the only inference which can be drawn from the conduct of the workman is that he abandoned his job and his services stood automatically terminated in law. Such an automatic termination of services, caused by**

**workman himself and not by the Employer, would not fall within the definition of “retrenchment”.**

11. In the instant case also as observed earlier when the respondent had been issuing letters to the petitioner to resume his duties but despite that the petitioner had not joined the same, his such conduct clearly speaks that he himself had abandoned his job and his case would not fall within the definition of retrenchment as such there is no question of violation of any provision of the Act. Hence, it cannot be said that the termination of the services of the petitioner w.e.f. 6.8.2010, is illegal and unjustified. Consequently, this issue is answered in negative.

***Issue no. 2.***

12. Since, the petitioner has failed to prove issue no.1, this issue become redundant.

***Issue No. 3.***

13. In support of this issue, the learned counsel for the respondent contended that since the appropriate government has not referred the dispute for adjudication under reference and the petitioner has approached this court directly which is not maintainable. However, when regard is given to the present application having been filed by the petitioner is of dated 14.3.2012 whereas the petitioner has raised demand notice Mark X under section 2-A on 12.8.2010. When, the appropriate government failed to send the dispute within a period of 45 days, the petitioner has filed the present application directly, which is perfectly maintainable in the present form. Hence, this issue is decided in favour of the petitioner and against the respondent.

***Issue no. 4.***

14. It could not be explained by the respondent as to why this petition is time barred. The Hon’ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing – cum- processing Service Society Limited and Another* has held as under:

***“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”***

Consequently, in-view of law laid down by the Hon’ble Apex Court, I hold that this petition is not time barred. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

***Issue no .5***

15. An objection has been taken by the respondent that the petitioner is estopped from filing the petition due to his act and conduct but in support thereof, no specific evidence has been led. Thus, by holding that the petitioner is not estopped from filing this petition, this issue is answered in favour of the petitioner and against the respondent.

***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of October, 2015.

**(SUSHIL KUKREJA)**

*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

**App.18 of 2014**

**Sh Ramesh Chand V/s Ex Engg. HPPWD & others**

26.10.2015.

Present:- None for the petitioner.  
Shri H.N. Kashyap, ADA for respondent Non-1  
None for respondent no. 2.

Case called twice but none appeared on behalf of the petitioner.

It is 11.00 AM. Be awaited.

**(SUSHIL KUKERJA)**

*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

**Case called again**

26.10.2015.

Present:- None for the petitioner.  
Shri H.N. Kashyap, ADA for respondent Non-1  
None for respondent no.2.

It is 12.35 PM. Case called again but none appeared on behalf of the petitioner. Be called after lunch.

**(SUSHIL KUKERJA)**

*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.*

**Case called after lunch**

26.10.2015.

Present:- None for the petitioner.  
Shri H.N. Kashyap, ADA for respondent Non-1  
None for respondent no.2.

It is 3.30 PM. Case called several times in pre and post lunch sessions but none has appeared on behalf of the petitioner. Today, the case is listed for the evidence of the petitioner but

neither petitioner not his counsel has put in appearance before this Court despite the fact that he has been afforded various opportunities to lead evidence in support of his claim. Since, the petitioner has failed to lead any evidence in support of his claim, this Court is left with no other alternative but to decide the application on the basis of material whichever is available on the file. The petitioner, in his claim petition, has stated that his services had been terminated orally and illegally by the respondent in the month of March, 2010 and he had completed 240 days in the preceding twelve calendar months and that his juniors were retained by the respondents, who are still in service but in support of his such contention, no evidence has been led by him. Moreover, there is no material on record, whatsoever, which may go to substantiate the contentions of the petitioner that his services had been illegally terminated by the respondent w.e.f. March, 2010 and that he had completed 240 days in the preceding twelve calendar months and that his juniors were retained by the respondents, who are still in service. Hence, in the absence of any material/ evidence on record, this application fails and is hereby dismissed. Since, the petitioner has filed this application under section 2-A of the Act, a copy of this award/ order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

26.10.2015

**(SUSHIL KUKERJA)**

*Presiding Judge, Industrial Tribunal-cum-  
Labour Court, Shimla.  
Court, Shimla.*

## **PANCHAYATI RAJ DEPARTMENT**

### **NOTIFICATION**

*Shimla-9, the 26<sup>th</sup> November, 2015*

**No. PCH-HA(3)23/95- II** The Governor of Himachal Pradesh is pleased to notify following Incentive/Award Scheme in the shape of Grant-in-aid to those Gram Panchayats, Panchayat Samitis and Zila Parishads who will return all their office bearers un-opposed during the ensuing general elections of Panchayati Raj bodies:--

<b>Condition of entitlement of awards in the shape of Grant-in- aid</b>	<b>Award money</b>
Incentive for <b>Gram Panchayat</b> for returning all its members, Pradhan and Up-Pradhan un-opposed.	Rs. 10.00 Lakh
Incentive for <b>Panchayat Samiti</b> for returning all its members, Chairman and Vice-Chairman un-opposed.	Rs. 5.00 Lakh
Incentive for <b>Zila Parishad</b> for returning all its members, Chairman and Vice-Chairman un-opposed.	Rs. 15.00 Lakh

By order,  
(ONKAR SHARMA),  
*Secretary (Panchayati Raj).*



ब अदालत तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी, सुजानपुर, तहसील सुजानपुर,  
जिला हमीरपुर, हिमाचल प्रदेश

राज किशन पुत्र श्री राधा कृष्ण, वासी सुजानपुर, मौजा भलेठ, तहसील सुजानपुर, जिला हमीरपुर  
(हि0 प्र0)

बनाम

आम जनता

विषय.—तस्दीक किया जाना इन्तकाल नंबर 10433 दिनांक 13-03-2015 दर्ज कागजात माल।

उपरोक्त विषय के सन्दर्भ में उपरोक्त फरीकदोयम व आम जनता को सूचित किया जाता है कि जगदीशवरी पुत्री किरपा राम, वासी सुजानपुर की मृत्यु दिनांक 09-12-2004 को हो चुकी है, जिसकी जवानी वसीयत बराए अमल दरामद राज किशन पुत्र राधा कृष्ण, वासी सुजानपुर, मौजा भलेठ, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0) ने पटवार खाना सुजानपुर में दी है। इस जवानी बसीयत के अनुसार यह इन्तकाल नंबर 10433 दिनांक 13-03-2015 को टिका सुजानपुर, मौजा भलेठ, तहसील सुजानपुर बहक राज किशन पुत्र राधा कृष्ण वासी सुजानपुर मौजा भलेठ तहसील सुजानपुर के कागजात माल में दर्ज होकर बराये फैसला को विचाराधीन है उपरोक्त इन्तकाल में सम्मिलित वसीयत की पुष्टि हेतु कार्यवाही जारी है जिसमें मृतिका के जायज वारसान को कई बार इत्ताह भेजी गई परन्तु उनको कहीं बाहर रहने के कारण इत्ताह साधारण तरीके से नहीं हो सकी जिस वजह से इन्तकाल मजकूर काफी अरसा से लम्बित पड़ा है। अधोहस्ताक्षरी को पूर्ण विश्वास हो चुका है कि उपरोक्त मृतिका के वारसान की तलवी साधारण तरीके से नहीं हो सकती है। अतः उन्हें इश्तहार हजा द्वारा सूचित किया जाता है उपरोक्त दर्ज शुदा इन्तकाल का फैसला करने के लिए दिनांक 26-12-2015 को तिथि निश्चित की गई है और इस इन्तकाल में पेश की गई जवानी वसीयत के बारा अगर उनको कोई उजर या एतराज हो तो वह उक्त दिनांक को अपना पक्ष असालतन या वकालतन अधोहस्ताक्षरी के समक्ष प्रस्तुत कर सकते हैं। हाजिर न आने की सूरत में उनके खिलाफ एक तरफा कार्यवाही लाते हुए इसका फैसला अनुसार जवानी वसीयत को गुण व दोष के आधार पर मानते हुए इन्तकाल का फैसला उनकी गैर हाजरी में कर दिया जायेगा।

ये इश्तहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 20-11-2015 को जारी हुआ।

मोहर।

हस्ताक्षरित/—

तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,  
सुजानपुर, जिला हमीरपुर, हि0 प्र0।

**In the Court of Shri Sanjeev Kumar, Marriage Officer-cum-Sub Divisional Magistrate,  
Jawalamukhi, District Kangra (H.P.)**

**In the matter of :**

1. Hari Dass aged 21 years s/o Shri Ram Lok, r/o Village Basadi, Post Office Kohala,  
Tehsil Jawalmukhi, District Kangra (H.P.).

2. Shivani aged 18 years d/o Kuldeep Chand, r/o Village Bahana Kalan, Post Office  
Ghallour, Tehsil Jawalamukhi, District Kangra (H.P.) . . Applicants

*Versus*

General Public

*Subject:—* Notice of Intended Marriage.

Hari Dass & Shivani have filed an application U/O of Special Marriage Act, 1954 alongwith affidavits in the court of undersigned in which they stated that they intend to solemnized marriage within three calender months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 24-12-2015. The objection received after 24-12-2015 will not be entertained and marriage will be registered accordingly.

Issued today on 23-11-2015 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub Divisional Magistrate,  
Jawalamukhi, District Kangra (H.P.).*

**In the Court of Shri Rohit Rathour, HAS, Marriage Officer-cum-Sub Divisional Magistrate,  
Kullu, District Kullu, H. P.**

In the matter of :

1. Sunil Dutt s/o Jogi Ram r/o Village Chanjhr, P.O. Puid, Tehsil & District Kullu.
2. Mrs. Babita d/o Jeet Bahadur r/o Varamkot, Village Baggi, District Arga Kanchi  
Lumini Anchal Nepal. . . *Applicants.*

*Versus*

General Public

*Subject.—*Proclamation for the registration of Marriage under section 16 of Special Marriage Act, 1954.

Shri Sunil Dutt and Mrs. Babita have filed an application on dated 19-11-2015 along with affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 18-9-2014 and they are living as husband and wife since then, hence their marriage may be registered under the Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or writing before this court on or before 19-12-2015. The objection received after 19-12-2015 will not be entertained and marriage will be registered accordingly.

Issued today 19-11-2015 under my hand and seal of the court.

Seal.

ROHIT RATHOUR,  
*Marriage Officer-cum-Sub Divisional Magistrate,  
Kullu.*

**In the Court of Shri Rohit Rathour, HAS, Marriage Officer-cum-Sub Divisional Magistrate,  
Kullu, District Kullu, H. P.**

In the matter of :

1. Amit Mahajan s/o Rattan Lal Mahajan r/o mahajan Cottage Village Badah, P.O. Mohal, Tehsil & District Kullu.
2. Miss Priya Bhatia d/o Krishan Lal Bhatia r/o 67/3, Chakeri, GT Road Gandhi Gram, Kanpur Nagar, Utter Pradesh . . . *Applicants.*

*Versus*

General Public

*Subject.*—Proclamation for the registration of Marriage under section 16 of Special Marriage Act, 1954.

Shri Amit Mahajan and Miss Priya Bhatia have filed an application on dated 21-11-2015 along with affidavits in the court of undersigned stating therein that they are unmarried and they intend to solemnized their marriage under section 11 of Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or writing before this court on or before 21-12-2015. The objection received after 21-12-2015 will not be entertained and marriage will be registered accordingly.

Issued today 21-11-2015 under my hand and seal of the court.

Seal.

ROHIT RATHOUR,  
*Marriage Officer-cum-Sub Divisional Magistrate,  
Kullu.*

ब अदालत राहुल चौहान, स्पैशल मैरिज अधिकारी (एस0डी0एम0) जोगिन्दर नगर, जिला मण्डी, हि0 प्र0

ब मुकद्दमा :

संसार चंद पुत्र ब्यास देव, गांव पसल हार, डा0 खा0 चौन्तडा, तहसील जोगिन्द्र नगर, जिला मण्डी, हि0 प्र0 पति ।

संतोष कुमारी पत्नी संसार चंद, गांव पसल हार, डा0 खा0 चौन्तडा, तहसील जोगिन्द्र नगर, जिला मण्डी, हि0 प्र0 पत्नी ।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 15, चैपटर 111, स्पैशल मैरिज एक्ट, 1954 के अन्तर्गत विवाह पंजीकरण करने बारा ।

उपरोक्त मामला में संसार चंद व संतोष कुमारी ने इस न्यायालय में प्रार्थना—पत्र पेश किया है कि उन्होंने दिनांक 23-09-2006 को हिन्दू रीति रिवाज के अनुसार गांव पसल हार, डा0 खा0 चौन्तडा, तहसील जोगिन्द्र नगर में शादी की है, और तब से पति—पत्नी के रूप में रहते चले आ रहे हैं। अतः जेरधारा 15 चैपटर 111 स्पैशल मैरिज एक्ट 1954 के अन्तर्गत उनका विवाह पंजीकृत किया जावे ।

अतः आम जनता, उनके रिश्तेदारों व माता-पिता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी भी व्यक्ति को इस बारा कोई उजर व एतराज हो तो वह दिनांक 21-12-2015 को बाद दोपहर 2.00 बजे या इससे पूर्व असातन या वकालतन हाजर अदालत होकर पेश करें अन्यथा एक तरफा कार्यवाही अमल में लाई जाकर शादी पंजीकरण प्रमाण-पत्र जारी कर दिया जावेगा तथा बाद में कोई भी उजर काबले समायत न होगा।

आज दिनांक 21-11-2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ है।

मोहर।

राहुल चौहान (हि0प्र0से0),  
विवाह पंजीकरण अधिकारी (उपमण्डल दण्डाधिकारी(ना0),  
जोगिन्दर नगर, जिला मण्डी (हि0 प्र0)।

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**Before Shri Narayan Singh Chauhan, Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.**

Case No. : 33/ 2015

Date of Institution : 23-11-2015

Date of Decision/  
Pending for : 29-12-2015

Smt. Meena Rana wife of Shri Dipendra Bahadur Rana, resident of H. No. 61, Arhat Bazar Kasauli, Tehsil Kasauli, District Solan, H. P. . . *Applicant.*

*Versus*

General Public

. . *Respondents.*

*Application under Section 13(3) of Births and Deaths Registration Act, 1969.*

Smt. Meena Rana wife of Shri Dipendra Bahadur Rana, resident of H. No. 61, Arhat Bazar Kasauli, Tehsil Kasauli, District Solan, H. P. has moved an application before the undersigned under section 13(3) of Births & Deaths Registration Act, 1969 along with affidavits and other documents stating therein that her son namely Nishchal Rana was born on 13-11-1999 at H. No. 61, Arhat Bazar Kasauli, Tehsil Kasauli, District Solan, H. P. but his birth could not be entered in the record of Cantt. Board Kasauli, Tehsil Kasauli within stipulated period. Hence she prayed for passing necessary orders to the C.E.O.-cum-Registrar, Births & Deaths Registration, Cantt. Board Kasauli, Tehsil Kasauli, for entering the same in the births & deaths records.

Therefore, by this proclamation the general public is hereby informed that any person having any objection for the registration of delayed birth of Nishchal Rana son of Shri Dipendra Bahadur Rana may submit their objections in writing in this court on or before 29-12-2015 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 23<sup>rd</sup> day November, 2015.

Seal.

Sd/-  
(NARAYAN SINGH CHAUHAN),  
Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.

**Before Shri Narayan Singh Chauhan, Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.**

Case No. : 32/ 2015

Date of Institution : 23-11-2015

Date of Decision/

Pending for : 29-12-2015

Smt. Lal Mati Pun wife of Shri Bhim Bahadur Pun, resident of H. No. 36, Near Krishan Bhawan Mandir, Arhat Bazar Kasauli, Tehsil Kasauli, District Solan, H. P. . . *Applicant.*

*Versus*

General Public

. . *Respondents.*

*Application under Section 13(3) of Births and Deaths Registration Act, 1969.*

Smt. Lal Mati Pun wife of Shri Bhim Bahadur Pun, resident of H. No. 36, Near Krishan Bhawan Mandir, Arhat Bazar Kasauli, Tehsil Kasauli, District Solan, H. P. has moved an application before the undersigned under section 13(3) of Births & Deaths Registration Act, 1969 along with affidavits and other documents stating therein that her son namely Nishchal Pun and daughter Nivia Pun were born on 11-08-2008 and 25-10-2006 respectively at H. No. 36, Near Krishan Bhawan Mandir, Arhat Bazar Kasauli, Tehsil Kasauli, District Solan, H. P. but their birth could not be entered in the record of Cantt. Board Kasauli, Tehsil Kasauli within stipulated period. Hence she prayed for passing necessary orders to the C.E.O.-cum-Registrar, Births & Deaths Registration, Cantt. Board Kasauli, Tehsil Kasauli, for entering the same in the births & deaths records.

Therefore, by this proclamation the general public is hereby informed that any person having any objection for the registration of delayed birth of Nishchal Pun and Nivia Pun son of Shri Bhim Bahadur Pun may submit their objections in writing in this court on or before 29-12-2015 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 23<sup>rd</sup> day November, 2015.

Seal.

Sd/-  
(NARAYAN SINGH CHAUHAN),  
Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.

